

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 10,433 **137**

JOY SILK MILLS, INC., *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Petition for Review and Request for Enforcement of an
Order of the National Labor Relations Board.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED DEC 19 1949

Joseph W. Stewart

CLERK

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v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Petition for Review and Request for Enforcement of an
Order of the National Labor Relations Board.

JOINT APPENDIX

I.

PLEADINGS.

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Received Oct. 29, 1948.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD**Charge Against Employer.**

1st Amended

1. Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Joy Silk Mills, Inc. at Hartsville, S. C. employing 57 workers in silk throwing has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a) subsections (1) and (5) of said Act, in that:

2. Since on or about September 20th, 1948, it, by its officers, agents and representatives, has interfered with, restrained and coerced, and is interfering with, restraining, and coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively, through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, which rights are guaranteed in Section 7 of the National Labor Relations Act.

Further that, on or about September 23, 1948, the said company by its officials, agents and representatives, refused to bargain collectively with the United Textile Workers of America, AFL, a labor organization chosen by a majority of its employees in an appropriate unit, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

3. By the acts set forth in the paragraphs above, and by other acts and conduct, it, by its officers, agents and representatives interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

3. (Paragraphs 3, 4, and 5 apply only if the charge is filed by a labor organization) The labor organization filing this charge, hereinafter called the union, has complied with Section 9(f)(A), 9 (f)(B)(1), and 9(g) of said Act as amended, as evidenced by letter of compliance issued by the Department of Labor and bearing code number. The financial data filed with the Secretary of Labor is for the fiscal year ending..... A certificate has been filed with the National Labor Relations Board in accordance with Section 9(f)(B)(2) stating the method employed by the union in furnishing to all its members copies of the financial data required to be filed with the Secretary of Labor.

4. Each of the officers of the union has executed a non-communist affidavit as required by Section 9(h) of the Act.

5. Upon information and belief, the national or international labor organization of which this organization is an affiliate or constituent unit has also complied with Section 9(f), (g), and (h) of the Act.

6. United Textile Workers of America, AFL, 722 William Oliver Building, Atlanta, Georgia. Walnut 4280-6900.

7. United Textile Workers of America, AFL. Same as above.

By JOSEPH JACOBS
Southern Director

Case No. 10-CA 545

Date filed October 29, 1948

9(f), (g), (h) cleared E. F.

Subscribed and sworn to before me this 29 day of October 1948, at Atlanta, Georgia as true to the best of deponent's knowledge, information and belief.

HAROLD KARP

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TENTH REGION

In the Matter of
Joy Silk Mills, Inc.
and
United Textile Workers of America, AFL
Case No. 10-CA-545

Complaint.

It having been charged by United Textile Workers of America, affiliated with the American Federation of Labor, that Joy Silk Mills, Inc. (herein called the respondent), has engaged in, and is now engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, 61 Stat. 136 (herein called the Act), the General Counsel of the National Labor Relations Board on behalf of the National Labor Relations Board (herein called the Board), has caused the Regional Director for the Tenth Region as agent for the Board, designated by the Board's Rules and Regulations, Series 5, as amended, Section 203.15, to issue this Complaint and allege as follows:

I.

The respondent, Joy Silk Mills, Inc., is, and has been since 1936, a corporation duly organized under, and existing by virtue of, the laws of the State of South Carolina.

II.

The respondent, at all times material herein, has maintained its principal office and place of business at Harts-

ville, South Carolina, where it is now and has been continuously engaged in the twisting and other processing of yarn and thread.

III.

The respondent, in the course and conduct of its business operations, and at all times material herein, causes and has continuously caused a substantial amount of raw materials, consisting principally of rayon and silk
690 yarns, of a very substantial value, to be purchased, delivered and transported in interstate commerce from and through the states of the United States other than the State of South Carolina to its plant at Hartsville, South Carolina; and causes and has continuously caused a substantial amount of the finished products, consisting principally of rayon and silk thread, valued in excess of \$250,000.00 annually, processed, manufactured, and distributed by it as a part of its business to be delivered and transported in interstate commerce to and through the states of the United States other than the State of South Carolina from its plant at Hartsville, South Carolina.

IV.

United Textile Workers of America, affiliated with the American Federation of Labor (herein called the Union) is a labor organization within the meaning of Section 2 (5) of the Act.

V.

All of the production and maintenance employees of the respondent at its plant in Hartsville, South Carolina, except for clerical and office employees and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

VI.

On or about September 16, 1948 a majority of the employees of the respondent in the unit described in paragraph

V above designated and selected the Union as their representative for the purposes of collective bargaining with the respondent.

VII.

At all times since on or about September 16, 1948 the Union has been the representative for the purposes of collective bargaining of a majority of the employees in said unit and, by virtue of Section 9 (a) of the Act, has been and is now the exclusive representative of all the employees in said unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

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VIII.

On or about September 23, 1948 and September 24, 1948 and at all times thereafter, the Union requested the respondent to bargain collectively in respect to rates of pay, wages, hours of employment and other conditions of employment with the Union as the exclusive bargaining representative of all the employees of the respondent in the unit described in Paragraph V above.

IX.

The respondent, on or about September 23, 1948 and September 24, 1948 and at all times thereafter, refused and continues to refuse to bargain collectively with the Union as the exclusive representative of all the employees in the unit described in Paragraph V above.

X.

The respondent, from on or about September 15, 1948 to date, by its officers, agents, and employees, more particularly by President S. C. Gilbert, General Manager H. P. Southerland, Plant Superintendent Raymond B. Russell, and Fred Carpenter committed, authorized, instigated and acquiesced in the following acts, to-wit:

- (a) Interrogating its employees about their union desires, sympathies, activities and membership.
- (b) Threatening and warning its employees to refrain from assisting, becoming members of or remaining members of the Union.
- (c) Promising its employees promotions, better jobs and similar benefits if they would refrain from assisting, becoming members of or remaining members of the Union.
- (d) Spying upon and keeping under surveillance union members and the union activities of its employees.
- (e) Soliciting its employees to spy upon and keep under surveillance the union members, meetings, leaders and activities and to report to the respondent.

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XI.

The respondent, by the acts described in paragraph IX above, in connection with the allegations contained in paragraphs V, VI, VII and VIII above, did refuse and continues to refuse to bargain collectively with the representative of its employees and thereby did engage in and is engaging in unfair labor practices within the meaning of Section 8 (a) 5 of the Act.

XII.

The respondent, by the acts described in paragraphs IX and X above, and by each of said acts, did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices within the meaning of Sections 8 (a) 1 of the Act.

XIII.

The activities of the respondent as set forth in paragraphs IX and X above, occurring in connection with the

operations of the respondent described in paragraphs I, II and III above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

XIV.

The acts of the respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8 (a) 1 and (5) and Section 2 (6) and (7) of the Act.

WHEREFORE on this 24 day of February 1949, the General Counsel of the National Labor Relations Board, on behalf of the Board, has caused the Regional Director for the Tenth Region to issue this Complaint against Joy Silk Mills, Inc., the respondent herein.

* * * * *

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Received Mar. 7, 1949

Answer.

Now comes Joy Silk Mills, Inc., hereafter called the Respondent, by its attorney, Henry J. Fox, and replies to the Complaint as follows:

I.

Respondent admits the allegations contained in Paragraphs I through V of the Complaint.

II.

Respondent alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph VI of the Complaint.

III.

Respondent denies the allegations contained in Paragraphs VII through XIV of the Complaint.

Being first duly sworn, I, S. C. Gilbert, state that I have read the foregoing answer and that everything contained therein is true to the best of my knowledge and belief.

S. C. GILBERT, President,
Joy Silk Mills, Inc.,
Hartsville, South Carolina

Subscribed and sworn to before me this 5th day of March, 1949.

JOHN F. WILMER,
Notary Public.

* * * * *

A-6 **Decision and Order.**

On May 27, 1949, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report and a supporting brief. The Respondent has also requested oral argument, which is hereby denied, because the record, in our opinion, adequately reflects the issues and the positions of the parties.

The Board ¹ has reviewed the rulings made by the Trial

¹ Pursuant to the provisions of Section 3(b) of the Act, as amended, the Board has delegated its powers in connection with this case to a three-man panel.

Examiner at the hearing, and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner except insofar as they are inconsistent with the Decision and Order herein.

1. We agree with the Trial Examiner's finding that the Respondent has refused to recognize and bargain with the Union within the meaning of Section 8 (a) (5) of the Act.² However, we disagree with the Trial Examiner's findings that the refusal took place on and after October 12, 1948, and that until this date, the Respondent was acting in good faith in its dealings with the Union.

As more fully set forth in the Intermediate Report, the Union represented a majority of the employees in the appropriate unit on September 24, 1948, when it made its initial request for recognition.³ The Respondent refused the request, insisting that the Union prove its majority status in a Board-conducted election. The Union thereupon filed a representation petition with the Board. On

² Member Murdock concurs in finding the violation of Section 8(a)(5) solely because he feels bound by the decisions of the Board in the *Cuffman Lumber* and *D. H. Holmes* cases cited in footnote 4.

³ We agree with the Trial Examiner's conclusion that the telephone call from Jacobs to Gilbert on September 24, 1948, constituted a request to bargain. However, we disagree with the Trial Examiner's subsidiary finding to the effect that the request was not express or formal but rather implied or to be inferred from Jacobs' telephone conversation. According to Jacobs' version of the conversation which was credited by the Trial Examiner, Jacobs asked Gilbert if he was willing to recognize the Union as the bargaining representative of the production and maintenance employees, adding that the Union had been authorized by these employees to represent them. This testimony, in our opinion, clearly establishes that the bargaining demand of September 24, was express and we so find. In its brief, the Respondent contends that the Trial Examiner's credibility findings with respect to the telephone conversation between Jacobs and Gilbert on September 24, are unsupported by the record and moreover are without logic. We do not agree. Furthermore, the importance of observation of witnesses to any finding of their credibility is such that we will not overrule the credibility findings of Trial Examiners unless they are clearly erroneous. See *Matter of Minnesota Mining and Manufacturing Company*, 81 N. L. R. B., No. 99.

September 30, at a conference attended by the Respondent's attorney, a field examiner of the Board, and the Union's spokesman, the Respondent's attorney indicated that Respondent would agree to a consent election if an investigation proved that the Respondent was subject to the Act's jurisdiction. On October 7, the Respondent gave its consent to an election which was held on October 19, 1948. However, beginning on October 12, and continuing until the election, the Respondent, as detailed in the Intermediate Report engaged in acts of interference and coercion which made a free election impossible.

We have previously held that an employer may in good faith insist on a Board election as proof of the Union's majority but that it "unlawfully refuses to bargain if its insistence on such an election is motivated, not by any *bona fide* doubt as to the union's majority, but rather by a rejection of the collective bargaining principle or by a desire to gain time within which to undermine the union."⁴ In cases of this type the question of whether an employer is acting in good or bad faith at the time of the refusal is, of course, one which of necessity must be determined in the light of all relevant facts in the case, including any unlawful conduct of the employer, the sequence of events, and the time lapse between the refusal and the unlawful conduct.

In the instant case, the Respondent engaged in unfair labor practices during the preelection period, the first of its illegal acts having occurred only 5 days after it agreed to a consent election and less than 3 weeks after the Union's initial bargaining request. Under these circumstances we find, contrary to the Trial Examiner, that the Respondent's insistence upon an election was not motivated by a good faith doubt of the Union's majority.⁵ On the contrary, we

⁴ *Matter of Artcraft Hosiery Company*, 78 N. L. R. B. 333.

⁵ Under the Trial Examiner's theory of the case a refusal did not occur until October 12. In his view, only the events which preceded October 7, the time the Respondent agreed to a consent election were relevant to the issue of the Respondent's motive in insisting upon an election. As no unfair labor

are convinced that the real reason the Respondent rejected the Union's request on September 24 was to gain time within which to undermine the Union's support. Accordingly, we find that a refusal took place on September 24, and from that time on, the Respondent refused to bargain collectively within the meaning of Section 8 (a) (5) of the Act as amended.

A-8 2. In its brief, the Respondent contends that a remedial order directing it to bargain with the Union, would deprive the Respondent of its right under Section 9 (c) (1) (b) of the Act to petition the Board for an election. This position is clearly untenable. We have found that on September 24 when the Union made its bargaining demand, it was the majority representative of the Respondent's employees in the appropriate unit. Having refused the Union's request in violation of the Act, the Respondent cannot now be heard to say that it entertains an honest doubt as to the Union's majority status, and that until an election is held, its duty to bargain is suspended.⁶

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that

practices occurred during this period, the Trial Examiner concluded that the Respondent was acting in good faith when it refused the Union's initial request and sought an election. Turning then to the Respondent's unfair labor practices which began on October 12, the Trial Examiner found that this illegal conduct, standing alone, constituted a refusal to bargain because it demonstrated that whatever doubts [the Respondent] had previously entertained were no longer genuine, and that it sought to evade its obligation to recognize and to bargain with the Union. As our decision indicates, we do not subscribe to the Trial Examiner's theory of the issue under discussion. We are of the opinion that the unfair labor practices, because of their nature and timing, color the Respondent's intent on September 24, and support a finding that the doubt advanced on that day by the Respondent as the reason for refusing to bargain with the Union, was feigned and advanced in bad faith. See *Matter of The Cuffman Lumber Company, Inc.*, 82 N. L. R. B., No. 37; *Matter of D. H. Holmes, Ltd.*, 81 N. L. R. B., No. 125; *Matter of Georgia Twine and Cordage Company*, 76 N. L. R. B., No. 84.

⁶ See *Frank Bros. Company v. N. L. R. B.*, 321 U. S. 702; *Matter of People's Motor Express, Inc.*, 74 N. L. R. B., 1597; *Matter of The Cuffman Lumber Company*, 82 N. L. R. B., No. 37.

the Respondent, Joy Silk Mills, Inc., and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Textile Workers of America, A. F. L. as the exclusive representative of all production and maintenance employees employed by the Respondent at its Hartsville, South Carolina, plant, excluding clerical and office employees, guards, professional employees, and all supervisors as defined in the Act;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Textile Workers of America, A. F. L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection and to refrain from any or all activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as condition of employment as authorized in Section 8 (a) (3) of the Act as guaranteed by Section 7 thereof.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Textile Workers of America, A. F. L., as the exclusive representative of all its employees in the above-described unit with respect to wages, rates of pay, hours of employment, and, if an understanding is reached, embody such understanding in a signed agreement;

A-9 (b) Post at its plant at Hartsville, South Carolina, copies of the notice attached hereto and marked Appendix A.⁷ Copies of said notice, to be fur-

⁷ In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words: "A DECISION AND ORDER," the words: "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

nished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region, in writing within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

Signed at Washington, D. C., this 13th day of September, 1949.

JOHN M. HOUSTON
Member

JAMES J. REYNOLD, JR.
Member

ABE MURDOCK
Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

A-10

Appendix A.

NOTICE TO ALL EMPLOYEES

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that

WE WILL NOT refuse to bargain collectively with UNITED TEXTILE WORKERS OF AMERICA, A.F.L., as the exclusive representative of all employees in the appropriate unit described below.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization to form labor organizations to join or assist UNITED TEXTILE WORKERS OF AMERICA, A.F.L., or any other labor organization to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement, requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) 3 of the National Labor Relations Act.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our production and maintenance employees at our plant in Hartsville, South Carolina, excluding clerical and office employees and guards, professional employees and supervisors as defined in the Act.

All our employees are free to become or remain members of this union, or any other labor organization.

JOY SILK MILLS, INC.
Employer

Dated..... By.....
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case No. 10-CA-545.

In the Matter of

JOY SILK MILLS, INC.

and

UNITED TEXTILE WORKERS OF AMERICA, AFL.

Messrs. Thomas Marshall and Milton O. Talent,
for the General Counsel.

Messrs. Henry J. Fox and James F. Kenney
(Posner, Berge, Fox, and Arent), of Washington, D. C.,
for the Respondent.

Messrs. Joseph Jacobs, Dorsey Moseley, and Gordon Finch,
of Atlanta, Ga., for the Union.

Intermediate Report and Recommended Order.**STATEMENT OF THE CASE.**

Upon a first amended charge filed October 29, 1948, by United Textile Workers of America, affiliated with American Federation of Labor, herein called the union, the General Counsel of the National Labor Relations Board¹ by the Regional Director for the Tenth Region (Atlanta, Georgia), issued a complaint dated February 24, 1949, against Joy Silk Mills, Inc., of Hartsville, South Carolina, herein called the respondent, alleging that the respondent had engaging in and was engaged in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1) and (5) and Section 2 (6) and (7) of the Labor Management Relations Act, 61 Stat. 136, herein called the Act. Copies of the complaint, the charge, and the notice of hearing were duly served on the respondent and the union.

With respect to the unfair labor practices the complaint alleged in substance:

¹ The General Counsel and his representatives are herein referred to as the General Counsel and the National Labor Relations Board as the Board.

(1) That from on or about September 15, 1948, and since, the respondent, by its offices, agents, and employees (more particularly by President S. C. Gilbert, General Manager H. B. Southerland, Plant Superintendent Raymond B. Russell, and Fred Carpenter), and in violation of Section 8 (a)

(1) of the Act, had interfered with, restrained, and A-12 coerced its employees in the exercise of their rights guaranteed in Section 7 by the following acts committed, authorized, instigated, and acquiesced in by the respondent: (a) interrogating its employees about their union desires, sympathies, activities, and membership; (b) threatening and warning its employees to refrain from assisting, becoming members of, or remaining members of the union; (c) promising its employees promotions, better jobs, and similar benefits if they would refrain from assisting, becoming members of, or remaining members of the union; (d) spying upon and keeping under surveillance union members and the union activities of its employees; and (e) soliciting its employees to spy upon and keep under surveillance the union members, meetings, leaders, and activities, and to report to the respondent; and

(2) That respondent on or about September 23, 1948, and September 24, 1948, and thereafter, and in violation of Section 8 (a) (1) and (5) of the Act, refused to bargain collectively with the union, which since on or about September 16, 1948, represented a majority of respondent's employees in an appropriate unit, as the exclusive representative of the employees in such unit.

By its answer respondent admitted certain allegations of the complaint as to the nature of its business, as to the union's qualification as a labor organization, and as to the appropriateness of the alleged unit, but entered a general denial of the commission of any unfair labor practices.²

² Respondent filed simultaneously with its answer its motion for a more definite statement or bill of particulars, a portion of which motion was granted by the order of the Trial Examiner dated March 17, 1949. The General Counsel complied with said order by filing a bill of particulars as the hearing opened.

Pursuant to notice a hearing was held on March 22, 23, 24, and 25, 1949, in Hartsville, South Carolina, before the undersigned Trial Examiner designated by the Chief Trial Examiner. The General Counsel and the respondent were represented by counsel and the union by representatives. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence pertinent to the issues was afforded all parties. As the hearing opened the General Counsel's motion was granted without objection to amend paragraph X of the complaint to include the name of William J. Outlaw as one of respondent's officers, agents, and employees by whom it had allegedly committed acts in violation of Section 8 (a) (1) of the Act.

At the conclusion of the case the General Counsel's motion to conform the pleadings to the evidence as to names and dates and such matters as concerned the record was granted without objection. The parties were afforded an opportunity to make oral argument and to file briefs and proposed findings of fact and conclusions of law. The parties waived oral argument. Briefs have been received from the General Counsel and the respondent.

Upon the entire record in the case and from his observation of the witnesses the undersigned makes the following:

A-13

FINDINGS OF FACT.

I. The business of the respondent.

Respondent is and has been for many years a corporation duly organized under and existing by virtue of the laws of the State of South Carolina, with its principal office and place of business at Hartsville, where it is now and has been continuously engaged in the business of contracting with respect to the processing of yarn and thread, i.e., the twisting, throwing, and other processing of yarn and thread. In the course and conduct of its business operations for a period commencing January 1, 1948, and ending December 31, 1948, which period is representative of all times material herein, respondent received raw materials

consisting principally of rayon and silk yarn valued in excess of \$250,000, 100 percent of which value was purchased, delivered, and transported in interstate commerce from and through States other than the State of South Carolina, to its plant at Hartsville. During said period respondent processed finished products consisting principally of rayon and silk thread valued in excess of \$250,000, 100 percent of which value was sold, shipped, and transported in interstate commerce to and through States other than the State of South Carolina, from its said plant.

Respondent conceded for the purposes of this proceeding that it is engaged in commerce within the meaning of the Act, and the undersigned finds that it is so engaged.

II. The labor organization involved.

United Textile Workers of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of respondent.

III. The unfair labor practices.

1. The setting; the main events; the issues.

Respondent operated a small but modern plant located at Hartsville, South Carolina. It normally employed from 50 to 60 employees, divided among 3 shifts.³ Its managing officers were S. C. Gilbert, president, and H. P. Southerland, general manager, and its plant superintendent was Raymond Russell. Respondent concedes that they and Wallie G. Cassidy, foreman, and Elsie Clyde McCaskill, forelady, were supervisors within the meaning of the Act.

Gilbert and Southerland occupied separated offices at the front of the plant building. A third office adjoining theirs and also adjoining the reception room or office lobby was occupied by K. F. (Fred) Carpenter, respondent's bookkeeper and sole clerical employee, whose status will later

³ The pay roll ending September 18, 1948, contained the names of 52 employees. They were divided approximately as follows: 25 on first shift, 7 a. m. to 3 p. m.; 17 on second shift, 3 p. m. to 11 p. m.; and 10 on the third shift, 11 p. m. to 7 a. m.

be discussed in detail. The main entrance into the offices and plant opened into the office lobby, adjacent to Carpenter's office, but the employees entered the plant by a separate door which opened into the canteen.

A-14 Concerted activities arose spontaneously among the employees on the afternoon of September 15, 1948, as a result of the displacement by respondent of head foreman, Zim Byrd, whom the employees on the first shift requested Gilbert to reinstate. When Gilbert did not adjust the grievance to their satisfaction, the employees began that evening the formation of a union. They obtained a supply of membership cards from the president of another of the union's locals and set about signing up members outside the plant as the third shift reported for work and as the second shift left.

The next morning the first shift (with possibly three or four exceptions) did not report for work but congregated outside the main entrance and continued the membership campaign. At Gilbert's request the leaders conferred with him in the plant around 9:30 a. m. They renewed their demand for the reinstatement of Byrd and added for the first time a demand for paid vacations. Gilbert agreed to neither, but in a discussion with a single leader (Bessie Chapman) thereafter, he promised that if the employees would immediately come back to work (it was then about noon) he would pay them for a full day's work and grant the request for paid vacations. The employees did not accept the offer, and the walk-out continued through the 16th and 17th (Thursday and Friday). Thirty-seven employees had signed membership cards through the 16th and one more signed on the 17th.

On Saturday, a non-work day, Helen Watson and Bessie Chapman, two of the leaders, sent a message to Gilbert that the employees would report to work on Monday. On Sunday evening the leaders met Gilbert at the plant at his request to reach an understanding of the basis on which the employees would return to work. The employees' grievances

were again fully discussed and Gilbert again promised paid vacations.⁴

Work was resumed on Monday, all shifts reporting as usual.

In the meantime the signed membership cards had been transmitted to the union's State Representative, Earl R. Britton, and by him to its Southern Director, Joseph Jacobs. On Friday morning, September 24, Jacobs called Gilbert long distance from Atlanta and made a demand (according to the General Counsel's contentions) for recognition and a request to bargain. When Gilbert did not immediately grant the demand or agree either to a consent election or a cross-check, Jacobs immediately filed a representation petition with the Board's Atlanta Regional Office.

In a conference held on September 30, respondent tentatively agreed to a consent election and all arrangements therefore were made. Its tentative consent was shortly made final and the election proceeded as per plan and without postponement on October 19. The union lost the election 32 votes to 16, 9 additional votes being challenged.

Evidence was offered by the General Counsel that on October 12, 18, and 19, respondent committed various unfair labor practices which interfered with the free choice of a bargaining representative. Respondent denied these.

A-15 On October 25, the union filed its protests and objections to the conduct of the election which were sustained in certain particulars by the Board's Regional Director, who on January 25, 1949, in his report thereon, ordered the election set aside and directed another election. However, on March 3, 1949, the union, with the approval of the Regional Director, withdrew its representation petition without prejudice.

The main issues presented by the evidence and argued by the briefs are (1) whether the respondent committed cer-

⁴ There was no discussion of recess periods, of rotation of shifts, of wages, or of the union.

tain acts of interference, restraint, and coercion between September 15 and October 19, both inclusive;⁵ (2) whether the union made a request to bargain either in the telephone call on September 24 or at the conference on September 30; and (3) whether the respondent refused to bargain on those dates or since. Other issues concern whether pre-trial preparations of respondent's counsel also constituted an unfair labor practice and whether a single admitted inquiry of an applicant for employment by respondent's plant superintendent since the election was coercive.

The evidence concerning alleged acts of interference, restraint, and coercion will be considered separately for the period prior to September 30 (when respondent consented to an election). For the period from September 30 to October 19, it will be considered in conjunction with the question of the alleged refusal to bargain, to which it relates.

2. Alleged interference, restraint and coercion prior to September 30

It is difficult to relate the evidence to the particular acts which the General Counsel charges to the respondent during the period prior to September 30. The bill of particulars charges that Gilbert, on September 16, engaged in "interrogation" and on September 19 he "threatened and warned" employees, and that Carpenter, on September 15, also "threatened and warned" employees to refrain from assisting, becoming members of, or remaining members of the union.⁶

The evidence establishes none of these allegations. Gilbert was cross-examined on the point whether he inquired who was the "organizer" of the group during the confer-

⁵ Involved here also are subsidiary issues whether certain of the acts were committed by respondent's supervisors or agents.

⁶ Allegations that Outlaw also engaged in interrogation on the 20th are disposed of *infra*, on the issue of Outlaw's status as a supervisor. There is no allegation in the pleadings and no contention in argument or briefs that any acts of Wallie G. Cassidy (admittedly a supervisor) or of Wilmouth (respondent's local attorney) constituted interference.

ence on the 16th, but he and Southerland denied that he made any such inquiry and there is no evidence that he did so. Indeed, the evidence is not in conflict that throughout the conferences on September 15, 16, and 19, no reference was made by participants on either side to "union" or "union activities." There is also no evidence that Gilbert on September 19, made any threats or issued any warnings. Nor, even assuming the General Counsel intended to charge Gilbert with promising benefits to refrain from union activities, does the evidence sustain such a charge during the period now under consideration. It shows only that he partially acceded to the demands of his employees (made during their concerted activities) to the extent of agreeing to grant a paid vacation.⁷

A-16 The evidence similarly does not establish that Carpenter, on September 15, threatened and warned employees in connection with their union activities. It does establish that on that date he did learn of the nature of those activities (and through him the respondent did also).⁸ Thus, on the night of September 15, the leaders in the movement to organize a union had gone to the plant and had begun signing up members as the third shift reported for work and as the second shift left. They operated mainly from Watson's car or Chapman's car parked on or near the parking lot in front of the plant. There is testimony that Elsie Clyde McCaskill (now conceded by respondent to be a supervisor) passed by and saw them on her way into the plant, but there is no evidence that she learned they were actually organizing a union at the time. A few moments later Carpenter came out of the plant and spoke to the group, inquiring what they were trying to do by keeping the girls from coming into the mill on the third shift and

⁷ Though the employees may, by gathering together to present their demands, have constituted themselves a "labor organization" within the meaning of the Act (*Matter of Gullett Gin Company, Inc.*, 83 N. L. R. B., No. 1, and cases cited in footnote 3), Gilbert's *granting* of a portion of their demands certainly cannot be said to have constituted *interference* with their rights to organize and to bargain collectively.

⁸ Carpenter's status as respondent's agent is resolved *infra*.

why they didn't go home and leave the second shift alone. There is no evidence that until Carpenter approached and put his inquiry he had any knowledge that the employees were actually engaged in organizational activities, though it is found that Carpenter did then learn of the nature of their activities.

It is therefore concluded and found that respondent did not, during the period from September 15 to 30, both inclusive, engage in acts which constituted interference, restraint, and coercion.⁹

3. The refusal to bargain; interference, restraint, and coercion

a. The appropriate unit; the representation by the union of a majority therein

It was stipulated by the parties and is hereby found that all of the production and maintenance employees of the respondent at its plant in Hartsville, South Carolina, except for clerical and office employees and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

A-17 It is also found that on September 16, 1948, a majority of respondent's employees in said unit had

⁹ The sharp issue which developed at the hearing as to whether respondent had knowledge prior to September 24 of the fact that the employees were organizing a union becomes an immaterial one in the light of this finding. However, it is found that respondent did obtain knowledge of that fact as a result of Carpenter's acts the night of the 15th, as well as through its supervisor, Wallie G. Cassidy to whom the General Counsel's witnesses attributed references to union activities. Indeed, with a plant and an organization as small as respondent's, it is difficult to imagine how respondent could have escaped knowledge of the nature of the employees' activities in view of the group activities on Wednesday night and on Thursday and Friday. See *N. L. R. B. v. Abbott Worsted Mills*, 127 F. 2d 438, 440 (C. A. 1); *Matter of Quest-Shon Mark Brassiere Company, Inc.*, 80 N. L. R. B. 175; *Matter of Firestone Tire and Rubber Company, etc.*, 62 N. L. R. B. 1316. The finding that it did have such knowledge is also supported by the inquiry of respondent's local counsel to Chapman on the 19th, while on respondent's business, "What's this I hear about a union?" Though General Counsel does not charge the respondent with responsibility for this inquiry, it clearly appears to have emanated from information which the attorney had received from the respondent.

designated and selected the union as their representative for the purposes of collective bargaining with the respondent. I therefore find that on September 16, 1948, the union represented a majority of respondent's employees in the appropriate unit, and that said majority continued to the time of the election on October 19. The question whether such representative status continued thereafter is disposed of in Section e, *infra*.

b. The requests to bargain

The events

Jacobs testified that on Friday morning, September 24, he called Gilbert from Atlanta, informed him he was calling to see whether the respondent would recognize the union as the collective bargaining agent for the production and maintenance employees at the plant because the union had been authorized to represent them. Gilbert replied that he wished an opportunity to consult his attorney and added that he thought the matter of union representation had been settled in the former election.¹⁰ Jacobs explained that the earlier election was more than a year ago and in any event the union had a right to ask for collective bargaining rights at any time if the respondent did not object. Jacobs also explained that instead of having an election they might agree on a cross-check of the membership cards by some impartial person to determine whether the union in fact had a majority and if so they could stipulate for the union to be recognized. Gilbert stated he preferred to let the Board handle it, and Jacobs then inquired his attitude as to a consent election. Gilbert still indicated his preference for a regular routine handling of the matter by the Board, and Jacobs concluded by stating in that case he would proceed immediately by filing his petition.

Gilbert's testimony was that Jacobs told him only that he had enough employees to petition the Board for an election and would do so unless Gilbert would agree to a consent

¹⁰ Which had been lost by the union, in October or November, 1946.

election; that he informed Jacobs that he preferred not to reach a decision until he got in touch with his attorney. He denied that Jacobs requested a conference for the purpose of bargaining, that Jacobs actually made any request or demand relating to bargaining, and that Jacobs or anyone else at any time ever requested him to bargain.

There is other evidence in the record which assists in resolving the foregoing conflict. Jacobs testified that in a conference on September 19, with Britton, he requested Britton to make a formal demand to bargain. Pursuant thereto Britton, on September 23, wrote Gilbert (mailing Jacobs a copy by air mail special delivery) as follows:¹¹

I have more than 30 percent of the employees of the Joy Silk Mills, Inc., who have signed cards authorizing the United Textile Workers of America to bargain for themselves under the Labor Management Relations Act of 1947. As a representative of the American Federation of Labor, the United Textile Workers of America, one of our affiliated International Unions, I am proceeding to petition the National Labor Relations Board to order an election in the plant of the Joy Silk Mill. Should you be willing to have a consent election I believe it will be to the advantage of all concerned.

May I have as early a reply as possible?

Jacobs testified that he received a copy of the letter on the evening of the 23rd, and recognizing it was not adequate as a formal demand for recognition as a bargaining agent, he called Gilbert the next morning for the purpose of perfecting such a demand.

If Gilbert's recollection of the conversation be accepted, Jacobs' call would appear to have been pointless and without purpose since Jacobs gave him no information which was not contained in Britton's letter nor any which Gilbert

¹¹ Incidentally, the evidence establishes that Gilbert did not actually receive the letter until after the call from Jacobs. Neither he nor Jacobs made any reference to the letter during the telephone conversation.

would not have obtained as a result of the filing of a petition with the Board. Significantly, Gilbert's version of Jacobs conversation actually constitutes an approximate summary of Britton's letter; and the undersigned concludes that Gilbert's recollection of the details of the telephone call was faulty and that in attempting to testify thereto he may unconsciously have substituted his better recollection of the contents of the letter which remained in respondent's possession up to the time of the hearing. In view of Jacobs' position with the union and his obvious experience in such matters, it is inconceivable that he would have hastened to call Gilbert long distance to repeat only what was in Britton's letter, nor was there any reason why with 38 signed membership cards in his possession out of an estimated unit of 45 Jacobs would have hesitated to claim a majority instead of merely enough to petition for an election, as contended by Gilbert.

The undersigned therefore finds that the conversation was substantially as testified to by Jacobs.

Immediately following the conclusion of the call Jacobs prepared and filed with the Board's Regional Office in Atlanta, a representation petition which alleged among other things that 38 employees of a unit of 45 supported the petition, that the union had notified the employer of its claim that a question concerning representation had arisen, and that the employer had failed to recognize the union. He also filed with the Board the 38 signed membership cards, all of which bore the following legend:

I, the undersigned, an employee of Joy Silk Mills, Inc., hereby accept membership in the United Textile Workers of America, (AFL), and authorize its representatives to bargain for me in all matters pertaining to my wages, working conditions, Union obligations and all other conditions of employment.

Later in the afternoon Paul M. Patterson, Field Examiner of the Board, also called Gilbert and inquired whether he would agree to a consent election. Gilbert again re-

fused, stating that he wished to consult his attorney first.

On September 30, Jacobs participated in a conference in respondent's office with Patterson, Southerland, and Henry J. Fox, respondent's attorney, to work out, if possible, arrangements for a consent election. Jacobs suggested to Fox that the union would be willing to agree to a cross-check of membership cards rather than an election. Fox

declined the suggestion stating "There was a question of going into an election,"¹² and that there was a question in his mind concerning interstate commerce and he wanted to check into it and give a written opinion. Later, near the end of the conference, Jacobs stated to Fox, "Of course, we could obviate all of this if we would set down and get a contract." There is no record that a reply was made. The foregoing findings are based on Jacobs' testimony.

Fox did not testify, but respondent offered Southerland's testimony and also offered in evidence Patterson's letter of October 1, 1948, which contained a summary from his notes made at the conference. Jacobs admitted that the account in the letter, though not in complete detail, was substantially correct. The letter corroborates Jacobs' offer of a cross-check and is not otherwise inconsistent with Jacobs' testimony. Nor is Southerland's testimony inconsistent with the foregoing findings. He did answer negatively a question whether either Jacobs or Patterson made any mention concerning a demand made by the union as to bargaining with the company; but that question clearly implied an express demand, and his denial must therefore be construed as a denial that any express mention or express demand was made. Jacobs' testimony does not establish that he made any express request to bargain or that he referred to any previous demand.

The conference concluded with respondent having tentatively agreed to a consent election subject to Fox's satisfying himself and respondent on the question concerning com-

¹² The significance of this statement does not appear.

merce. Thereafter, upon receipt of his advice that the Board had jurisdiction, respondent signed the consent election agreement, and the election was held on October 19, under the arrangements which had been agreed upon in the conference.

Concluding findings

Respondent's contention is that no request to bargain was ever made on behalf of the union. Of course, if this were so the complaint that respondent has unlawfully refused to bargain cannot be sustained. *N.L.R.B. v. Columbian Enameling & Stamping Company, Inc.*, 306 U.S. 292, 297. If there were anything in the Act which required that a demand to bargain be express or formal (which there is not),¹³ it must be held under the evidence above summarized that there was no demand to bargain. However, it is established by Board decisions that no formal demand is necessary,¹⁴ and it also appears that a demand though not express may be inferred or implied from the circumstances of communicating to a respondent the fact that the union is the representative of a majority of the respondent's employees in an appropriate unit. *Matter of Unique Ventilation Company, Inc.*, 75 N.L.R.B. 325; *Matter of Prigg Boat Works*, 69 N.L.R.B. 97; *Matter of Van De Kamps Holland-Dutch Bakers, Inc.*, 56 N.L.R.B. 694, 707, 711.

The question therefore arises whether under the facts herein found, a request to bargain is to be implied or inferred from Jacobs' telephone conversation with Gilbert on September 24, and from his subsequent conversation with Fox during the conference on September 30.

A-20 It is clear that Jacobs made a demand for recognition since he informed Gilbert that the union had been authorized by the employees to represent them and he

¹³ Section 8(a)(5) of the Act provides that it shall be an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a)."

¹⁴ Telephone calls have been held sufficient under certain circumstances. *Matter of A. J. Showalter Company*, 64 N. L. R. B. 573, 576, footnote 1; *Matter of Van De Kamps Holland-Dutch Bakers, Inc.*, 56 N. L. R. B. 694, 711.

inquired whether the respondent would recognize the union as the collective bargaining agent of the unit consisting of the production and maintenance employees. Respondent's contention that at no time did Jacobs claim to represent a majority of the employees is rejected.¹⁵ The claim of a majority is clearly implicit throughout the conversation. First, there was the statement that *the employees had authorized the union to represent them*, and this was followed by a request for recognition. Then there was reference to an election and Jacobs attempted to persuade Gilbert to agree to the alternative procedure of a cross-check of the membership cards to determine whether the union in fact had a majority. These circumstances clearly implied the union's assertion that it represented a majority of the employees in the unit.

Respondent also argues that the Britton letter, Jacobs' call, and Patterson's call, considered together, demonstrate that what the union was seeking was a certification by the Board because of the many advantages which would accrue to a labor organization therefrom,¹⁶ and that all of those communications sought only to induce respondent to consent to an election in order to expedite such certification. Certainly, there is no intimation in Jacobs' testimony that he was interested in certification merely for the sake of certification; indeed any such suggestion is negated by his offer to consent to a cross-check¹⁷ (which is of course outside the scope of the Board's present procedure in representation cases).

¹⁵ Respondent's attempts to attach significance to Britton's claim in his letter of September 23 that cards had been signed by "more than 30 percent" of the employees. This was obviously intended to indicate that the union was able to qualify under the Board's administrative rule contained in Section 202.17 of its Statements of Procedures (12 Fed. Reg. 5651, as amended 13 Fed. Reg. 4871) for an investigation of its proposed representation petition. Furthermore, Jacobs explained that he made his call to Gilbert because he did not consider Britton's letter adequate as a formal demand for recognition as a bargaining agent.

¹⁶ Citing *Matter of General Box Co.*, 82 N. L. R. B., No. 75, decided April 1, 1949.

¹⁷ The reiteration of that offer at the September 30 conference, plus the suggestion to Fox that the election could be dispensed with if the union could get a contract, emphasizes this conclusion.

It is therefore concluded and found that the telephone call from Jacobs to Gilbert on September 24, constituted a request to bargain. It is similarly concluded and found that although Jacobs made no express demand to bargain at the September 30 conference, such a demand was clearly to be implied from his offer to Fox to agree to a cross-check in lieu of an election and his offer to "obviate all this" if the union could get a contract.

c. The alleged refusals to bargain on September 24 and 30.

The General Counsel contends that Gilbert's insistence during the Jacobs' telephone conversation on a "routine handling" of the union's proposed representation petition, his refusal to consent to an election, and his refusal to consent to a cross-check constituted a refusal to bargain because such position was not taken in good faith and because the Respondent did not entertain a *bona fide* doubt as to the union's representation of a majority of the employees. A similar contention is made as to respondent's refusal at the September 30 conference to agree to a cross-check of membership cards in lieu of an election.

A-21 It is true, as the respondent points out, that an employer may in good faith insist upon a Board conducted election to establish the union's status as the collective bargaining representative; but the employer cannot in every case disregard a demand for recognition simply because the union can file or is filing a petition for an election. There are other ways of proving a majority, including an agreement for a cross-check. An employer is not bound to accept that method or any other specific method, but he must at least make a reply to a demand for recognition and a proposal to submit proof of majority status, or he must take some other action which will furnish a basis for evaluating his good faith.

The determination of good faith depends of course upon the facts of the particular case. Among factors which have been considered significant are the employer's resort to or abstinence from dilatory tactics, his willingness or un-

willingness to consent to an election, the sequence of the events, and the lapse of time between the refusal and the commission of any unfair labor practices. It can generally be said that the evidence must show that the employer had already created an atmosphere of unfair labor practices at the time he declined to bargain or had immediately or shortly embarked upon such a course of unfair labor practices that it may reasonably be assumed he intended to frustrate collective bargaining at the time he refused to bargain. See *Matter of Artcraft Hosiery Co.*, 78 N.L.R.B. 333; *Matter of John Deere Plow Co.*, N.L.R.B., No. 4.

In the present case the evidence establishes that though refusing to recognize the union until the representation question was settled by a Board election, respondent engaged in no dilatory tactics whatsoever but cooperated in disposing of the matter expeditiously by agreeing to a consent election. Respondent met with the Board's representative and Jacobs less than 1 week after the petition was filed and gave its consent to an election. Furthermore, the election was held less than 3 weeks after that meeting and less than 1 month after the union's original demand for recognition, without a single request for a delay or postponement.

Jacob's call came a week after the peak of the earlier concerted activities and after the employees had voluntarily returned to work. And though it has been found that respondent had knowledge of the fact, during the week of September 15, that the employees were attempting to organize a union,¹⁸ it committed no act of interference therewith. Indeed, the respondent might have assumed from the conference on the night of the 19th, and the return to work on Monday, that it had satisfactorily adjusted the employee grievances and that the employees had abandoned their efforts to organize a union.

¹⁸ It had no knowledge, however, of the extent to which the campaign had been successful.

Under these circumstances Gilbert could well have doubted Jacob's claim of a majority and his right to demand recognition and could justifiably have indicated, in the light of the suddenness of the call and the apparent "high pressuring," that he wanted time to consult his attorney and would therefore prefer the case to follow "routine" Board procedure. Furthermore, Gilbert was under the misapprehension that the representation question had been settled in the earlier proceedings. Though Jacobs endeavored to correct that misapprehension, Gilbert was entitled, of course, to seek the verification of his counsel; and there is no indication from the evidence that his expressed wish to take the matter up with his counsel was motivated either by bad faith or by the desire to gain time to undermine the union's asserted majority.

A-22 Neither do the events at the September 30, conference establish a refusal to bargain. There, according to Patterson's account, concurred in by Jacobs, the atmosphere was one of the fullest cooperation. There the respondent readily gave its tentative agreement to a consent election, reserving only a brief opportunity for its counsel to clear up a "slight doubt" in his mind as to whether, because of a recent change in the nature of respondent's business, its operations still effected interstate commerce. Patterson's account, corroborates Jacobs' offer of a cross-check, but it also alludes to two reasons why respondent finally did not consent: respondent "tended to question" the authenticity of the cards, and although the examiner agreed to make the check if the company consented, the suggestion was not insisted upon because there was not then sufficient time available in which to have the check made.

Respondent thereafter promptly resolved its doubt on the commerce question and gave its final consent to the election prior to October 7.

It is concluded and found that the evidence does not establish that down to that time a refusal to bargain had

occurred. The question remains whether such a refusal occurred as a result of respondent's subsequent acts, the evidence of which is now summarized.

d. Interference, restraint, and coercion

The events

Subsequent to the telephone call of September 24, Gilbert, acting on the advice of counsel, had immediately instructed respondent's supervisors not to question the employees about the union or union activities, not to threaten or promise, not to spy on them in any manner, and not to have anything to say about their activities in the mill. On October 7, he posted a notice informing the employees of the election and of their right to vote freely therein. Those and other statements in the notice plainly qualified as free speech.

Down to that time there is no evidence that respondent was at all concerned about the outcome of the election or that it had endeavored in any manner to interfere with the choice of a bargaining representative by its employees. However, there is evidence which indicates that some time between October 7 and October 12 respondent's attitude of impartiality and unconcern underwent a reversal. Such change is reflected in a series of acts and statements by respondent's managing officers, agents, and supervisors, the evidence of which is summarized under the name of respondent's representative to whom the particular acts are attributed;

(1) S. C. Gilbert

On October 12, 1948, the employees were separately assembled on each of the three shifts and read a lengthy written statement prepared by Gilbert. Similarly on October 18, two separate lengthy statements were read on each shift.¹⁹ Though Southerland and Russell were present on all the occasions, Gilbert selected Carpenter to

¹⁹ On the second and third shifts the two statements were read as one.

read the statements for him. Though the statements in the main clearly fall within the limits of permissible free speech certain portions are claimed by the General Counsel to constitute interference, restraint, and coercion. Specifically, objection was made to the following portions of the statement of October 12:

A-23 (a) As soon as equipment for the canteen which has been ordered arrives, you will be given a rest period at the Company's expense so that you may eat your lunches and relax in comfort during your shift.

(b) If our prices are too high, or if the quality of our service is insufficient, we lose customers. Similarly, if our wages are too high, we lose money and obviously couldn't stay in business. Thus, it is apparent that what we can pay is limited by factors beyond our control.

(c) You will get no less nor no more regardless of whether there is a union here. We will always do the best to utmost of our ability.

The General Counsel also objects to the following portions of the first statement read on October 18:

(a) We are giving you a paid vacation.

(b) I want to tell you in all sincerity that no matter how the election goes the time will never come when you will have to join the union to keep your job in this Company or improve your working conditions or to have equal opportunities with anyone else.

The effect of these statements is considered under *Concluding Findings, infra*, this section.

Bessie Chapman testified that after the reading of the statements on the 18th, she questioned Gilbert about shift rotation, a subject not mentioned therein, and though he did not expressly promise rotation he stated that rotation would be started if a majority of the employees by a vote indicated their desire for it. Her testimony is corroborated by other witnesses, including Russell, who admitted telling

Vonceil Holloman that Mr. Gilbert had promised a vote on shift rotation and so far as he knew the mill would be guided by the result.

(2) K. F. (Fred) Carpenter.

Preliminary to summarizing the evidence of Carpenter's acts and statements, the issue of his status as respondent's agent will be resolved.

Carpenter was respondent's bookkeeper and timekeeper and one-man office force. He had no assistants, and no employees were subject to his supervision and direction. He had no authority to hire or fire or to recommend either. The General Counsel contends, however, that under the circumstances disclosed by the evidence Carpenter was respondent's agent having been held out as such by respondent, and that respondent is responsible for the acts and statements attributed to him in the record.

The physical lay-out of the offices and plant and the evidence concerning the operation of a closely affiliated company, the Premier Knitting Mills, are of first significance. It has been shown that Carpenter occupied one of respondent's three offices, the other two of which were occupied by Gilbert and Southerland, respondent's managing officials. Indeed, respondent termed Carpenter's office its "general office" and kept in it, not only its ordinary books and A-24 pay roll records, but also its corporate books and records.²⁰ Carpenter's office was immediately adjacent to the reception room or office lobby into which the general public and all applicants for employment entered.

Under the physical arrangement, Carpenter met all callers at the plant whose business was either with Joy or with Premier Knitting Mills. Thus, the evidence shows that Premier itself occupied under a separate lease the

²⁰ Although Carpenter testified that the corporate stock book and minute book were kept in a private compartment of respondent's safe to which he did not have access, it seems clear that at least under the surface *indicia* of the arrangement Carpenter was occupying a position roughly corresponding to the office of secretary. Certainly, respondent maintained him in a position of apparent parity with its managing officers.

rear portion of the building which housed Joy's offices and plant; that two doors opened from Joy's premises into Premier's; that the general public, including applicants for employment, customarily used Joy's main entrance which opened into its office lobby, and that Premier's employees used the canteen door entrance used by Joy's employees.

Premier's fiscal affairs were also closely interwoven with Joy's the controlling stock interests being identical, and all except one director being the same. Though owning no stock in Joy, Carpenter owned 25 percent of the capital stock of Premier, Gilbert and Southerland also owning 25 percent each. Carpenter was president of Premier and in fact acted as its sole managing officer, though Gilbert was treasurer and Southerland was vice president. Premier's official corporate books and records were also kept in respondent's general office and in the same safe which contained respondent's.²¹

Carpenter also performed in the general office all necessary bookkeeping and clerical work on Premier's books and there met callers who had business with Premier, including applicants for employment. Indeed, only Carpenter had authority to hire and fire for Premier. That his authority so to act was known among respondent's employees is established by the testimony of Jean Longrie (not denied by Carpenter) that she accompanied her sister to a conference with Carpenter when the sister had applied to him for a job at Premier, and that she knew Carpenter was the one to ask for a job at Premier. Longrie also testified to observing Carpenter make frequent visits into the Premier plant.²²

²¹ Carpenter explained again that such records were kept in a private compartment to which he did not have access. No explanation was offered of his failure of access to such records in the light of his position with Premier.

²² Respondent attaches significance to the fact that Carpenter performed for the employees a number of "menial tasks" such as calling them to the telephone and delivering lunches to them and that he was familiarly called by his first name. However, under the physical and organizational set-up, such duties would necessarily have fallen to the occupant of the general offices.

A-25 Under the foregoing circumstances, including the physical comminglement of accommodations, functions, and fiscal affairs, and the small size of the two establishments (Premier's operations were much smaller than Joy's), the undersigned concludes that respondent's employees had knowledge—indeed, could not escape knowledge—of Carpenter's official position with Premier. Certainly, their knowledge of his power to hire employees for Premier is conclusively established.

Here, then, was a situation in which Carpenter openly exercised not mere supervisory power, but complete managerial control over the affairs of a closely affiliated concern. He was maintained by respondent in an office comparable to those of its managing officers, and under at least surface conditions which otherwise reflected relative parity with them.

Respondent, therefore, placed Carpenter in a position where its employees had every reason to identify him with respondent's own management. That conclusion received support from Carpenter's occasional usurpation of managerial functions and from the use which respondent sometimes made of his services. Illustrative was Carpenter's attempt on the night of September 15 to prevent and terminate what he assumed was interference by Watson, Chapman, and others, with employees who were reporting for and leaving work. Carpenter did not deny the incident nor did he or any of respondent's officers attempt to explain or justify his usurpation of managerial authority and functions on the occasion.

A further illustration was furnished by Carpenter's attempt to order or invite Mosely to leave the premises on the morning of the election (later referred to in more detail) and his identification of himself with management in the subsequent argument with Mosely outside the can-

The informality of address was likewise without significance since Russell was similarly addressed; furthermore respondent's evidence establishes that relations between the management and the employees generally were on an informal basis.

teen.²³ Also of significance was Gilbert's selection of Carpenter as his spokesman in the reading of all three of his statements on all three of the shifts to the employees on October 12 and 18, above referred to. Though Southerland and Russell were both present on all the occasions and though at least the third shift was outside Carpenter's normal hours of duty, no explanation was offered why Carpenter was selected as Gilbert's mouthpiece.

On the evidence of the record as a whole it is concluded and found that respondent held Carpenter out to its employees as its agent, and indeed as a part of its managerial staff, and that to the extent that his acts and his statements to the employees are of a coercive nature they are attributed to respondent. That evidence is now summarized.

(a) *Bessie Chapman* testified that the morning of the election and before she voted Carpenter approached her and requested her to read a newspaper clipping,²⁴ A-26 and she complied. This provoked her to recite an old grievance against the company to which Carpenter replied, "Why, Bessie, I thought better of you" and then cursed the union. Carpenter also quoted Russell to the effect that she was as good an operator as respondent had and told her "you could better yourself down here if you would try." Carpenter concluded the conversation by saying, "I know I can't change your mind, there is no point in me standing here arguing with you," and "I see I can't do anything with you so I will talk with Henry O'Neal."

Carpenter's testimony does not substantially contradict Chapman's account.

²³ As illustrated by his statement that Moseley had no business "interfering with the operations of *our* plant," and that "before *we* will see the union come in here, *we* will burn the goddamned plant down." (Italics supplied.)

²⁴ The testimony of other witnesses, including Carpenter, establishes that the clipping was of the Westbrook Pegler column from the *Charlotte Observer* of October 19. Carpenter admitted that it was a distinctly unfavorable commentary on union leadership, being definitely uncomplimentary to some high union officials.

(b) *Henry D. O'Neal* testified that in a conversation which he fixed uncertainly as the day before the election, Carpenter approached him at Chapman's machine and asked him, "You didn't tell me which way you were going to vote, for or against the union?"; that when he didn't reply Carpenter at first turned away but came back and asked "you like your job?"

Carpenter admitted having a conversation with O'Neal; that he inquired how O'Neal was getting along since his return to work [after a disciplinary lay-off]; that O'Neal responded that he was doing all right and then voluntarily stated his position as to the union, i.e., that he was trying to make the union people think that he was for the union because they were after him, but in reality he was not for it. Carpenter told him he did not think the employees had anything to gain by having a union and hoped he was not for it.

(c) *Jean Longrie* testified that the morning of the election Carpenter asked her to read the Pegler clipping previously referred to, that she did so, that it related to the president of the American Federation of Labor, and referred to the fact that he had been in prison or had taken money, that Carpenter then remarked that the union was being run by a bunch of crooks and that if the union came in Mr. Gilbert would probably close down the mill and they would both be out of a job and he needed his.

Carpenter admitted asking Longrie to read the article, telling her it was another angle of the union question which possibly had not been presented. After she read it he told her he had found Joy a satisfactory place to work, that he liked it and "did not see any reason for or anything the employees would gain by having a union in the mill."

(d) *Edna Robbins* testified that the day before the election Carpenter came up to her machine and opened a conversation by stating that he was surprised that she was for the union, that her father (who worked elsewhere) was not

a union man and that he didn't think she should be a union girl. She hadn't told Carpenter she was for the union and asked him how he knew. He said that rumors had been going around.

Carpenter admitted having a conversation "substantially along the line" of Robbins testimony. He testified that having known Robbins father for a long time he did not feel that *the father* would like such activities on the part of his daughter.

(e) *Robert Morris* testified that on the day of the election Carpenter came up to him in the plant and asked him how he was going to vote; that he replied that was his business and he would vote the way he wanted to. After a discussion regarding Morris' feelings toward Southerland and Gilbert, Carpenter told him "Don't be going around telling people how to vote."

A-27 Carpenter did not testify in denial of Morris' testimony. Respondent did, however, confront Morris with a questionnaire he had filled out for its counsel during their trial preparations in which Morris had answered "No" to the following question:

Have you at any time been questioned by Mr. Gilbert, Mr. Southerland, Mr. Russell, or Mr. Carpenter, concerning your union activities, membership, desires or sympathies: If so, what were the circumstances? Morris admitted that he had interpreted the inquiry to include conversations concerning voting in the election, but claimed that he had gotten mixed up in answering the question. In his testimony, under oath on the stand, he steadfastly adhered, under cross-examination by respondent's counsel and by the Trial Examiner, to his testimony as above summarized, insisting that it was true.

(f) *Helen Watson* testified that on election day around 11 a.m.²⁵ Carpenter brought to her machine the Pegler

²⁵ The third shift voted from 7 to 7:30 a. m.; and the second from 2:30 to 3 p. m. and the first from 3 to 3:30 p. m.

clipping previously referred to. He first stated that he had talked to a good many of the girls and he couldn't seem to do much with them; that he knew it wasn't any use to talk to her but he wanted her to see the clipping. She read it, and after further conversation Carpenter referred to the Byrd incident and stated that if he were in Gilbert's place he would tell some of the employees they could quit if they wanted to. In the same conversation Carpenter told her that "in the office they were surprised to find she was the brains behind the union movement."

Carpenter's testimony included no denial of the foregoing testimony by Watson. He admitted showing her the clipping.

(g) *The election morning incident.* There is no substantial conflict in the evidence concerning this incident which was actually in two segments. The first occurred inside the canteen (the polls) before the opening of the polls, and the other immediately afterwards on the parking lot in front of the plant. Watson, Chapman, Moseley, Gordon Finch (another international representative of the union), and Carpenter testified to the occurrences in the canteen and Moseley, Finch, and Carpenter to those outside the plant.

The polls were scheduled to open at 6:45 a.m. and the election was being conducted by Rev. M. V. Shean (referred to throughout as Father Shean) as agent of the Board. Watson had been selected as the union's observer or representative, with Chapman as an alternate, and Carpenter as respondent's observer or representative. Watson met Moseley, Finch, Chapman, and Father Shean at the plant around 6:10 a.m. and in a few minutes Carpenter arrived and let them in the main entrance into the office lobby and they went on into the canteen. The canteen door (the normal employee entrance) had been locked in order to prevent first shift arrivals from interfering with third shift voting, but Moseley, who was

there to inspect the voting premises for the union, had not understood the arrangement. In a few moments some of the first shift arrivals having rattled the door knob, Moseley began inquiring why the door was locked, directing his inquiries to Father Shean. Carpenter A-28 heatedly intervened, exclaiming, "Moseley, who are you to tell anyone what to do? You have no damn right in here," taking off his glasses. Carpenter conceded that his remarks, though not an order, were in effect an invitation to leave the premises. Moseley endeavored to justify his presence and Father Shean intervened and broke up further exchanges.

Moseley and Finch immediately left the plant and went to their cars, but Carpenter followed them outside and renewed his argument. He stated that they should get into a decent profession since they were certainly not in one, that they "hadn't any damn business interfering with the operations of our plant" and that they were "just as red as Joe Stalin." After several minutes argument Carpenter also stated, "before we will see the union come in here we will burn the goddamned plant down and throw the key away and the employees here know that we will do it." Carpenter denied only making the last quoted statement. No employees heard the conversation outside the plant and there is no evidence that it was communicated to any of the employees either before or after the election. Watson and Chapman heard the conversation in the canteen.

It will be observed that Carpenter admitted many of the salient facts testified to by the General Counsel's witnesses and that he made no denial of other significant testimony. His unsupported denials of still other portions of such testimony is insufficient to overcome the weight of that of the several witnesses for the General Counsel, who testified to a series of separate but similar acts and statements, all immediately before the election, in which Carpenter was obviously attempting to influence

the voting. It is significant also that Carpenter's actions closely paralleled those of Russell, which are next summarized. Cf. *Matter of Macon Textiles, Inc.*, 80 N.L.R.B., No. 238. It is therefore, concluded and found that the happenings on the occasion above referred to were substantially as testified to by the witnesses for the General Counsel.

(3) Raymond Russell

(a) *Jean Longrie* testified that on the morning of the election Russell asked her why she had suddenly become interested in the union and she told him she had a right to be. After further conversation Russell added as he left her "I hope you are satisfied."

Russell testified that he did not recall a conversation with Longrie on that day.

(b) *Edna Robbins* testified that the day before the election she walked up to her machine where Russell was talking with Ruth Segars, that Russell then spoke to her saying she was on one side of the fence and that he was on the other and then proceeded to relate some of his experiences as a union member saying among other things that the union didn't do him any good and that all he did was pay dues. On cross-examination as to the circumstances under which she had answered a questionnaire for respondent's counsel during their trial preparations, Robbins testified that she had answered all questions truthfully. However, no attempt was made to impeach her by confronting her with her questionnaire.

Russell denied making the statement attributed to him. He admitted the incident occurred but testified that he was talking with Segars as Robbins came down the aisle, that it was Segars whose remark was to the effect that Robbins was on the wrong side of the fence, and that he remarked, "Well, everybody has a right to their own opinion." Segars was not called as a witness.

A-29 (c) *Henry D. O'Neal* testified that the day after the union meeting at the grammar school (estab-

lished by other evidence as Sunday, October 17) Russell told him "The way I understand it, you are for the union," and asked him what he thought or how he felt about the union; that he replied that he didn't know, but volunteered that he had gone to the union meeting at the school. Russell then asked him how many were there, and he replied 10 or 12. Russell then told him that if he found out anything more to let him know, and O'Neal agreed to do so.

Russell admitted that a conversation occurred at the time and place fixed by O'Neal but testified that it started by O'Neal volunteering the statement that he had gone to the union meeting and that there weren't many there; that Russell replied, "Is that right?", and that nothing further was said.

(d) *Gwendolyn Beasley* testified that on October 18, Russell questioned her about the union meeting at the school house on Sunday, asking how many were there, what the union promised, and whether the union could give the employees anything he couldn't. She told him she didn't go to the meeting and he wanted to know why. She told him she forgot about it and he said, "Well, there must not have been anybody there, everybody I have spoken to said that nobody had been." During the same conversation Russell told her that if the union came in it would take away the relationship between the employees and the respondent, and that the the employees would have [to] correspond with the mill through the union; that he was a union member once and never got anything out of it except paid dues.

Russell admitted that he had a conversation with Beasley at the time and place in question, but testified that his inquiry on the occasion was "Are you going to vote in the election tomorrow?", that when she gave an affirmative response he continued, "Well, I hope you have found out all the details because I hope everybody will find out and will find out the good and bad and will vote according to the dictates of their conscience." He added that he didn't approve of the union from his personal standpoint, but she wasn't to be guided by what he thought.

(e) *William Chapman* testified that a day or two before the election Russell asked him if he had made up his mind about the way he was going to vote. Chapman replied that he had, and Russell said he "hoped it was made up the right way." Russell also said that he had been in the union and didn't like it and didn't think it did any good and that "You can't leave the union to become a foreman." Russell added that he "had a raise coming up" for Chapman, but if the union came in it might delay it and he might not get it.

Russell testified that he had no recollection whatsoever of such a conversation.

(f) *Vonceil (Hendrix) Holloman* testified that she had more than one conversation with Russell a few days before the election but was unable to state the exact number. Insofar as pertinent to the issues her testimony as to the conversations may be summarized as follows: Russell told her some of his experiences as a member of a union, said that it wasn't any good and that he wished she was on his side of the fence. He asked her if she went to the union meeting on Sunday night; he told her that if the employees voted for the union the union couldn't make them lose their jobs but that she might lose her shift [through rotation]; that the mill was giving the employees a vacation and the union couldn't say they would give it to them. On A-30 cross-examination she admitted that during all the conversations he informed her she could vote as she pleased and she added "then he told me [the union] didn't do him any good." She denied that she had asked Russell what would happen if the union came in and that she was afraid of losing her shift because of lack of seniority.

Russell testified to a single conversation with Holloman, his account being as follows: that Holloman herself brought up the subject of a shift rotation and inquired whether if the union came in she would be replaced by an employee with more seniority. He replied that he didn't know, but

that Mr. Gilbert had promised a vote on shift rotation and so far as he knew the mill would be guided by the result.

(g) *Lois Gainey* testified that when interviewed on her application for a job in December, 1948,²⁶ Russell told her he was going to need a few girls and would keep her in mind. Then he asked her what she thought of a textile union and she said she didn't know enough about unions to express her mind one way or the other. She was hired shortly thereafter. Russell did not testify to the incident. Respondent in its brief concedes that Gainey's testimony is accurate.

In most of the above instances Russell admitted the fact of a conversation, but in each case, according to his version, he avoided any statement of a coercive nature. He admitted expressing in some instances his personal views and his opinion as to the union. Russell testified that he had received instructions from Gilbert and from respondent's counsel not to threaten or interrogate employees or otherwise to pry into union activities, but that he was not informed what he could say about the union and that "I was advised that anything I said would be of my own personal opinion."

It will be seen that six employees testified to a series of separate incidents, all of the same general character, occurring on the day of the election or shortly prior thereto. Significant also is the fact that Russell's anti-union activity closely paralleled the course of action pursued by Carpenter. In view of all the circumstances it is concluded and found that Russell either misunderstood his instructions or chose to interpret them too literally, and that his testimony is inadequate to overcome the preponderant weight of the combined adverse testimony. It is therefore concluded and found that the incidents occurred substantially as testified to by the General Counsel's witnesses.

²⁶ For convenience this incident is treated here, together with the incidents which preceded the election.

(4) H. P. Southerland

(a) *Jean Longrie* testified that shortly before the election Southerland talked with her in the shipping room and informed her that if he wanted to improve her job he could not do so without the consent of the union if the union came in.

Southerland denied that such a conversation occurred.

(b) *Minnie Lee Gainey* testified that on the night the Gilbert letters were read on her shift (October 18) Southerland asked her if she was going to vote for or against the union. She told him she didn't know. He then asked if Emma Gray Gainey (her sister-in-law) had told her how to vote and she replied, "Emma Gray hasn't told me what to do."

A-31 Gainey was a very nervous witness and appeared to become easily confused even by relatively simple questions. Her testimony on cross-examination was somewhat confused as to the circumstances under which she had answered a questionnaire for respondent's counsel during trial preparations, and as to the manner in which she had answered question No. 15 thereon. That question read as follows:

Have you at any time been questioned by Mr. Gilbert, Mr. Southerland, Mr. Russell, or Mr. Carpenter concerning your Union activities, membership, desires, or sympathies? If so, state what were the circumstances?

Gainey could not recall independently how she had answered the question, and when shown the questionnaire she could read only a portion of the answer, although other portions are legible. The first answer, "No," had been stricken out and below it the following answer appeared:

On one occasion Mrs. Southerland asked me "or you going to Join the Union" I said I don't know, and nothing more was said by any of us.

Her answer, though varying somewhat from her testimony, does reflect an effort on her part (probably the best effort of which she was capable) to furnish respondent's counsel with the information they were seeking.

Southerland admitted the fact of a conversation, that it arose in the manner testified to by Gainey, but testified that his inquiry was whether she was "going to vote in the Union-Company election in the morning." Though he got no answer he continued "I hope you do" and added "Did Emma Gray tell you whether she was going to vote in the election or not?"

It is concluded and found that on the occasion in question Gainey was confused by and misunderstood the questions which Southerland put to her, and that Southerland's efforts and inquiries were limited to "getting out the vote" rather than attempting to influence it.

(5) William Outlaw

Outlaw is 19 years of age and had been in respondent's employ about 3 years. Originally he was a machine operator but later became (and remained) a machine fixer.

In that job he repaired and adjusted machines, oiled machines, and sometimes operated machines. During September and October 1948, his assignment was in the twisting room on the second floor on the first shift. There are only three employees who operate the twisters on each shift. Outlaw's base pay is the same as that of all production employees, his only increases resulting from tenure. A large majority of the production and maintenance employees earn a higher rate than Outlaw because of longer tenure. He had no authority to hire or fire or to recommend either; he has never made reports to his supervisors because of the quality or quantity of the work of other employees and is not supposed to. He was solicited to join the union, though his vote was challenged by the union at the election.

General Counsel's contention that Outlaw was a supervisor was based mainly on testimony that Outlaw had on various occasions given orders to employees operating the twisters, had "directed" one or more of them A-32 to go down to vote in the election, and had "counted ends." The latter operation consisted of counting on the machines three times during his shift the ends of yarn which were not running and recording the count on a sheet of paper under the machine operator's name.

The preponderance of the evidence is clearly to the effect that respondent did not inaugurate the practice of counting ends until after the election and until after the occurrence of the incidents in which Outlaw was allegedly involved. Furthermore, it is found that the function was purely a non-discretionary one of keeping a production record, and that a similar function was performed in other departments by non-supervisory employees.

Nor is the evidence as to the giving of orders adequate to establish that Outlaw had authority "responsibly to direct" other employees. The evidence does establish that on some occasions Russell used Outlaw to transmit directions to the twisters on the second floor.²⁷ Also, when it became necessary to shut a machine down for repairs Russell himself notified the operator to cease tending it and, after the repairs were made, that it was ready for her to resume tending it. The undersigned finds that the evidence as a whole does not support the testimony of the General Counsel's witnesses that Outlaw gave orders or that they took orders from him, certainly not in the sense that Russell had authority "responsibly to direct" them. Cf. amended decision *Matter of The Ohio Power Company*, 80 N.L.R.B., No. 205.

Another significant consideration is that there was no apparent necessity in respondent's small organization for

²⁷ Such occasions would necessarily have been infrequent since Outlaw's employment on the first shift was at a time when Russell was also in the plant, and the evidence shows that Russell made frequent visits to the twisting department.

the creation of a supervisory position over three employees; indeed this would seem to have led to three separate supervisory posts—one for the three twisters on each shift. Such disproportion of supervisors over rank and file employees is a persuasive circumstance. *Matter of The Ohio Power Company, supra.*

The Board's recent decision in *Matter of Inman Mills*, 82 N.L.R.B., No. 85 affords *a fortiori* authority. There it was held that "section men" in a textile mill who did mechanical work only from 25 to 64 percent of their time, who were responsible for maintaining proper quantity and quality of production on the machines they supervised, and who received a 25 to 30 cents an hour differential over employees in their section, were not supervisors within the meaning of the Act.

It is concluded and found that Outlaw did not occupy supervisory status. It is therefore considered unnecessary to summarize the evidence of acts and statements attributed to him.

Concluding Findings

While many of the statements made by Gilbert, Carpenter, and Russell on the various occasions as above recounted fell within the bounds of permissible free speech, it is concluded and found that the following statements and inquiries were coercive:

- A-33 (a) The announcement or promise of rest periods at respondent's expense, contained in the Gilbert statement of October 12, and Gilbert's promise after the reading of his statements on October 18, that he would start shift rotation if a majority of the employees voted for it.

The undersigned concludes and finds that said announcements and promises of benefits because of their significant timing were calculated directly to affect the decision of the employees on the issue of union representation. *Matter of*

Macon Textiles, Inc., 80 N.L.R.B., No. 238; *Matter of Agar Packing & Provision Co.*, 81 N.L.R.B., No. 199. Cf. *Matter of Craddock-Terry Shoe Corporation*, 82 N.L.R.B., No. 13; *Matter of Hinde & Dauch Paper Co.*, 78 N.L.R.B. 488. For the presentation of economic benefits to employees to have them forego collective bargaining is a form of pressure and compulsion no less telling in its effort on employees because benign. *Matter of Hudson Hosiery Company*, 72 N.L.R.B. 1434. Interference is no less interference because it is accomplished through allurements rather than coercion when it is employed to stem a tide of organization. *Western Cartridge Company v. N.L.R.B.*, 134, F. 2d 240 enf'g. 44 N.L.R.B. 1, Cert. denied 320 U.S. 746. This does not mean, of course, that an employer is foreclosed from announcing or granting economic benefits during a union's organizational campaign. What is unlawful under the Act is employer's granting or announcing such benefits (though previously determined upon *bona fide*) for the purpose of causing the employees to accept or reject a representative for collective bargaining. *Matter of Hudson Hosiery Company, supra*. It is found that the announcement or promise of paid rest periods was reasonably calculated to have that effect, and that respondent thereby engaged in interference, restraint, and coercion in violation of Section 8 (a) (1).

It is not found that Gilbert's reference to paid vacations was coercive since that benefit had been granted on the employees' demand during their earlier concerted activities and prior to the advent of the union's representatives and prior to any representation question.

The undersigned also rejects the General Counsel's contention that the other portions of the Gilbert statements (see page 13, *supra*) were of coercive effect because of an implied threat that the advent of the union would affect their wages adversely and an implied threat not to bargain with the union. It is found to the contrary that the statements in question do not imply such threats. Similarly,

the statement from which the General Counsel implies that the respondent would not agree to a union shop is found not to constitute an anticipatory refusal to bargain concerning the union security issue as contended. Cf. *Matter of Tygart Sportswear Company*, 77 N.L.R.B. 613, and cases cited, footnote 2.

(b) The inquiries by Carpenter as to how employees would vote in the election and as to their union membership, views, and attitudes; his threat that Gilbert probably would close the mill if the Union came in; and his implied threat to O'Neal that his job would be affected by his vote (cf. *Matter of Atlantic Stages*, 78 N.L.R.B. 553).

It is not found that Carpenter's circulation of the anti-union clipping, his cursing of the union, or his vilification of union officers or representatives constituted coercion. *Matter of Union Screw Products Co.*, 78 N.L.R.B. 1107; *Matter of Kelco Corporation*, 79 N.L.R.B. 759; *Matter of Atlanta Broadcasting Co.*, 79 N.L.R.B. 626; *Matter of C. Pappas & Co., Inc.*, 82 N.L.R.B., No. 90; *Matter of U. S. Trailer Mfg. Co.*, 82 N.L.R.B., No. 11. Neither is it found that his implied invitation to Moseley to leave the A-34 voting premises was coercive, though made in the presence of two employees, nor his later statement to Moseley and Finch on the parking lot that "we will burn the plant down," etc. There is no evidence that the latter statement was communicated or intended to be communicated to the employees. *Matter of M. Snower & Company, etc.*, 83 N.L.R.B., 38, citing *Matter of Parkside Hotel*, 74 N.L.R.B. 809.²⁸

(c) The inquiries by Russell as to employee's interest in, views toward, and membership in the union and as to how they intended to vote in the election; his inquiries as to union meetings and activities and

²⁸ But see *Matter of Arton Studio*, 74 N. L. R. B. 1158, 1163; and *Matter of Piedmont Wagon & Mfg. Co.*, 79 N. L. R. B. 967.

his solicitation of employee assistance in obtaining such information; his implied threat that an employee would not receive a contemplated increase if the union came in; his implied threat that if an employee voted for the union, she would lose her shift; and his questioning of an applicant for employment as to her union views.

It is not found that Russell's other statements were of a coercive effect nor that Southerland's remarks to Longrie were coercive.

It is therefore concluded and found that by the acts and statements set forth in paragraphs (a), (b), and (c), *supra*, respondent engaged in interference, restraint, and coercion in violation of Section 8 (a) (1) of the Act.

e. The refusal to bargain; concluding findings.

It has been found that the union made a request for recognition and a request to bargain. It has also been found that as a condition precedent to granting these requests, respondent was entitled in good faith to insist upon the establishment of the union's majority in the manner it selected. Having consented to an election, however, as the appropriate means of satisfying its doubts, respondent was under the correlative obligation to permit and to abide by its employees' free choice of a representative as it existed at the time of the union's request for recognition and not to attempt to defeat such choice by any form of interference, restraint, or coercion. *Matter of Prigg Boat Works*, 69 N.L.R.B. 97, 123. But respondent's acts of interference and coercion on October 12, 18, and 19, as herein found, demonstrated that whatever doubts it had previously entertained were no longer genuine, that it no longer had reason to believe the union's claim of a majority was untrue (cf *Matter of John Deere Plow Co., of St. Louis*, 82 N.L.R.B., No. 4), and that it sought to evade its obligation to recognize and to bargain with the union.

If its good faith had continued, respondent would certainly have either refrained from such acts of interference

or have notified the union that it would no longer insist on the consent election and that it was ready to bargain. For notwithstanding its initial *bona fides*, respondent could no longer be heard to say that it entertained an honest doubt as to the union's representative status after it set about the commission of acts which rendered impossible of fulfillment the very condition precedent which it had imposed i.e., the demonstration in a free election of the union's claim of a majority. Cf. *Matter of Consolidated Machine Tool Corp'n.*, 67 N.L.R.B. 737, enf'd as modified, 163 F. 2d 376 (C.A. 2); cert. den. 322 U.S. 824.

A-35 Under these circumstances the election result affords the respondent no defense (Cf. *Matter of D. H. Holmes Company, Ltd.*, 81 N.L.R.B., No. 125) since to the extent that the election showed a defection in the union's support, such defection was attributable to the respondent's unfair labor practices and is therefore not a bar to a remedial order in this case. (*Ibid*, and cases cited, footnote 11.) The clear majority which the union enjoyed as early as September 16, has therefore continued unabated; and it is found that the union has at all times since that date remained the exclusive bargaining representative of the employees in the appropriate unit.

It is concluded and found that by its said acts respondent on October 12, 18, and 19, 1948, and since, refused to bargain collectively with the unions as the exclusive representative of its employees in an appropriate unit and thereby deprived its employees of the rights guaranteed by Section 7 of the Act.

4. Trial preparation by respondent's
counsel; interference, restraint,
and coercion

It was stipulated at the hearing that the complaint should be deemed amended to provide for findings on the question whether certain pre-hearing preparations of respondent's counsel constituted violations of the Act. The facts were stipulated as follows:

Counsel for the respondent, on or about March 10 and 11, 1949, submitted a questionnaire to a substantial number of respondent's employees employed during the months of September and October, 1948. Counsel prepared the questionnaire in the course of preparation and investigation of the facts alleged in the complaint. Before preparing the questionnaire respondent's counsel called the Board's Regional Director in Atlanta by telephone and informally requested the Chief Law Officer of the Region for a more definite statement of facts in order to prepare respondent's defense in the hearing. This request was refused whereupon respondent's counsel filed a motion for a more definite statement on the same basis and also filed its answer. The motion was referred to the Trial Examiner and was granted in part but the requested information was not furnished respondent under the Trial Examiner's order until the morning of March 22, 1949, at the start of the hearing.

The questionnaire was submitted to and answered by the employees of the respondent under the following circumstances:

They were interviewed in the canteen in groups of from four to eight employees on company time. Counsel introduced themselves by name to the employees and advised them that they represented the company as attorneys. They told the employees the purpose of the questionnaire which was to be given them was to enable counsel to prepare the company's defense in the hearing that was to take place on March 22. The employees were advised that the filling out of the questionnaire was completely voluntary and that there would be no reward, no promises, threats, or coercion of any kind connected with the filling out of the questionnaire. They were advised that they were free to leave the canteen at that point even before the questionnaires were handed to them. They were advised that they could omit the answer to any question or all of the questions after reading them over. They were asked not to answer any question if they didn't understand it thoroughly.

A-36 They were requested to ask counsel concerning the meaning of any words, phrases, or statements which were contained in the questionnaire that they did not understand. They were requested to answer each question truthfully if they answered it and to state the facts whether they thought them unfavorable to the company or not. They were requested not to compare answers to the questionnaire among themselves, to give independent answers in accordance with the facts as each understood them to be. They were requested not to answer questions by conjecture and to state only facts of which they were certain.

They were advised that they had a right to engage in union activities prior to the election, and for that matter at the present or any time in the future. They were also told that the company had no right to interfere with their union activities in any manner.

At that point the employees were asked whether all the foregoing statements were clear to each of them and whether any of them had any questions to ask concerning their rights in connection with the filling out of the questionnaire. Counsel then read each question aloud and asked each employee if the question was clear to him. Thereupon, each employee filled out his questionnaire independently and without assistance of counsel.

Each employee signed each page of the questionnaire and the certification at the end of the questionnaire to the effect that the answers were given voluntarily. The signature of each employee was witnessed by another employee who was present at the time the questionnaire was signed. Each employee was requested to read the questionnaire and his answers over again before finally giving the questionnaire to the respondent's counsel.

After the questionnaires were filled out each employee was again advised of the purpose of the questionnaire and asked whether he understood his answers thereto were voluntary. After the employees finished reading the ques-

tionnaire they were requested to ask other employees in their departments to come into the canteen in groups of four or five employee, and they were asked or told by the supervisors to go down to the canteen which they did.²⁹

The questionnaire contained 28 questions including a number which the General Counsel and the union contended at the hearing were outside the scope of the issues framed by the pleadings, exceeded the permissible scope of trial preparations, and constituted an unfair labor practice.

The questions objected to were as follows:

5. Have you ever signed a card in connection with Union activities?

6. What was the nature of the card?

7. What did you consider to be the purpose of signing the card?

A-37 8. Did you consider yourself a member of the Union when you signed the card?

9. At the time you signed the card, did you pay any money for membership or other fees in the Union?

10. Did you agree to the future payment of any membership, initiation or other fees to the Union?

13. Did you terminate your connection with the Union at any time after you signed a card?

14. If so, for what reason did you terminate your connection with the union?

21. Did you cast your vote at the election solely according to your own personal views concerning whether you desired the Union to represent you and without any fear or threats as to your job and future with the Company, and without being influenced in any respect by promise of future benefits by the Company?

25. Did you consider that these speeches or the statements and notices posted on the bulletin board were threats or promises of benefits to influence your vote against the Union?

²⁹ There is no evidence that any of respondent's officers or supervisors were present during the interviews.

Respondent relies on the Board's decisions in the *Matter of N & W Overall Co., Inc.*, 51 N.L.R.B. 1016; *May Department Stores Co.*, 70 N.L.R.B. 94; and *F. W. Judge Optical Works, Inc.*, 78 N.L.R.B. 385. In the first two cases the Board held that an employer is privileged to interview employees for the purpose of discovering facts within the limits of the issues raised by a complaint, where the employer or its counsel does so for the purpose of preparing its case for trial and does not go beyond the necessities of such preparations to pry into matters of union membership, to discuss the nature or extent of union activities, to dissuade employees from joining or remaining members of a union, or otherwise to interfere with the statutory right of self-organization.

The main questions here are whether the information elicited was within the scope of the issues raised by the complaint, and if not whether the inquiries, under the circumstances in which they were made, constituted interference, restraint and coercion.

It is true that the allegations of the complaint are along broad and general lines and that respondent's counsel was unable to procure from the Regional Director a voluntary particularization thereof. However, it seems clear that at least some of the questions to which the General Counsel objects were clearly outside the scope of the material issues. This is particularly evident in those which sought information as to the payment of membership or other fees and as to any agreement for the future payment of such fees and as to those which probed only for such purely subjective matters as the employees' understanding of the purpose and of the effect of the cards, his reasons for terminating his connection with the union (if he had done so) and whether he had voted freely in the election.

It has been held that signing an application for membership implies authority to bargain³⁰ and that neither

³⁰ It has been found that on two occasions the union offered to agree to a cross-check of its membership cards and that respondent declined both offers.

A-38 membership in nor payment of dues to a union is determinative of statutory authorization. *Consolidated Machine Tool Corporation v. N.L.R.B.*, 67 N.L.R.B. 737, 739; enforced 163 F. 2d 376; cert. den. 332 U.S. 824; and that the testimony of a signer as to his subjective state of mind at the time of signing cannot operate to overcome the effect of his overt action in having signed an application. *Ibid.*, and see *Matter of the Nubone Co., Inc.*, 62 N.L.R.B. 322; *Wright-Hibbard Industrial Electric Truck Co., Inc.*, 67 N.L.R.B. 897, 906; *Phillips Transfer Co.*, 69 N.L.R.B. 493. Under these holdings the inquiries sought evidence which was plainly extraneous to the issues.

The same is true as to the inquiry whether the employee had voted freely in the election without threats, fear, promises, etc., from the company. *Matter of Pure Oil Co.*, 73 N.L.R.B. 1, 3, and cases cited in footnote 4; *Matter of G. H. Hess, Inc.*, 82 N.L.R.B., No. 52; *Matter of Dixie Shirt Co.*, 79 N.L.R.B. 127. There is of course no issue in the present proceeding as to the validity of the election. That issue was once raised on the union's objections filed in the representation hearing and disposed of by the Regional Director on his order setting the election aside. No reason, therefore, appears for counsel's exploration or probing of the subjective state of employees' minds at the time of the voting.

Furthermore, the inquiries postulate the erroneous test whether the employee was in fact influenced by any of respondent's promises, threats, etc. The true test is, of course, not whether the employee actually felt intimidated or coerced but whether the employer engaged in conduct which it may reasonably be said tends to interfere with the free exercise of employee rights under the Act. *N.L.R.B. v. Ford Brothers*, 170 F. 2d 735 (C.A. 6) and cases there cited; and see *Matter of G. H. Hess, Inc.*, *supra*, and *Matter of Pure Oil Co.*, *supra*.

Aside from seeking evidence on immaterial issues, it is also noteworthy that an important distinction between

the inquiries sustained by the Board in the cases cited by respondent ³¹ and those now presented, is that these which were upheld sought evidence of purely objective facts whereas the present inquiries are concerned chiefly with probing the employees' subjective state of mind.

What has already been said disposes of the point whether the inquiries under all of the circumstances constituted interference, restraint, and coercion. That they do is conclusively established by repeated Board and judicial decisions. The fact that the employees were fully advised that they were free to answer and of the purpose for which the inquiries were being put does not dissipate the clearly coercive nature of the inquiries which explored their past, present, and future relations with their duly selected bargaining agent. See cases last above cited. It is therefore found and concluded that by the inclusion in the questionnaire of questions Nos. 7, 8, 9, 10, 13, 14, 21, and 25, respondent engaged in interference, restraint, and coercion within the meaning of Section 8 (a) (1) of the Act.³²

A-39 *IV. The effect of the unfair labor practices upon commerce*

It is found that the activities of the respondent set out in Division III hereof, occurring in connection with the operations of the respondent described in Division I hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent Joy Silk Mills, Inc., has engaged in unfair labor practices within the meaning

³¹ The *Judge Optical Works* case is also distinguishable on the fact that the questionnaire was submitted to *former employees*.

³² In view of the allegation in the complaint that the union has continued to represent a majority of the employees in the unit, it is not found that the inclusion of questions 5 and 6 constituted interference or coercion.

Respondent's counsel impliedly conceded that questions 13 and 14 may have been improper, since after 7 employees had been interviewed, they struck those questions from the questionnaire.

of Section 8 (a) (1) and (5) of the Act (61 Stat. 136), the undersigned will recommend that it cease and desist therefrom and that it take certain affirmative action in order to effectuate the purposes of the Act.

It having been found that from October 12, 1948, and thereafter respondent has refused to bargain collectively with United Textile Workers of America, AFL., as the exclusive representative of its employees in an appropriate unit, it will be recommended that the respondent, upon request, bargain collectively with said union.

It having been found that the respondent has engaged in certain acts of interference, restraint, and coercion. It will be recommended that the respondent cease therefrom.

It has been found that the respondent engaged in a variety of unlawful acts which interfered with the free choice by its employees of their bargaining representative, and that such acts were resorted to for the deliberate purpose of enabling respondent to evade its obligation to bargain collectively with such representative in an election to which it had consented. Because of the respondent's unlawful conduct and the underlying purposes manifested thereby, the Trial Examiner is of the opinion and finds that there is a danger of the commission of other and additional unfair labor practices. Therefore, in order to effectuate the guarantees of Section 7 of the Act, it will be recommended that the respondent be ordered to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization. See *May Department Stores v. N.L.R.B.* 66 S. Ct. 203.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, the undersigned makes the following.

CONCLUSIONS OF LAW

1. United Textile Workers of America, AFL., is a labor organization within the meaning of Section 2 (5) of the Act.
2. All of respondent's production and maintenance em-

ployees at its plant in Hartsville, South Carolina, except for clerical and office employees and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. At all times since September 16, 1948, United Textile Workers of America, AFL, has been and now is the representative of the majority of the employees of the respondent in the unit above described, for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

4. By refusing on or about October 12, 1948, and at all times thereafter to bargain collectively with United Textile Workers of America, AFL, as the exclusive representative of all its employees in the aforesaid appropriate unit, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (5) of the Act.

5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of said Act.

RECOMMENDATIONS

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record of the case, the undersigned recommends that the Joy Silk Mills, Inc., and its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Textile Workers of America, AFL, as the exclusive representative of all its employees in the unit heretofore found appropri-

ate with respect to rates of pay, wages, hours of employment, or other conditions of employment:

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Textile Workers of America, AFL, or any other labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Textile Workers of America, AFL, as the exclusive bargaining agent of all its employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its Hartsville, South Carolina, plant copies of the notice attached hereto marked Appendix A. A-41 Copies of said notice to be furnished by the Regional Director for the Tenth Region shall, after being duly signed by respondent's representative, be posted by respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region (Atlanta, Georgia,) in writing, within twenty (20) days from the receipt of this Intermediate Report and Recommended Order, what steps respondent has taken to comply herewith;

It is further recommended that unless, on or before twenty (20) days from the date of the receipt of this Inter-

mediate Report and Recommended Order, respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondent to take the action aforesaid.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board—Series 5, as amended August 18, 1948, any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report and Recommended Order or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report and Recommended Order. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of

said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes.

Dated at Washington, D. C., this 27th day of May, 1949.

GEORGE A. DOWNING
Trial Examiner

A-42

Appendix A.

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDATIONS OF A TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the Labor Management Relations Act, we hereby notify our employees

WE WILL NOT refuse to bargain collectively with UNITED TEXTILE WORKERS OF AMERICA, AFL, as to the exclusive representative of all employees in the appropriate unit described below.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join or assist UNITED TEXTILE WORKERS OF AMERICA, AFL, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

WE WILL BARGAIN collectively upon request with the above-named union as the exclusive representative of all employees in the bargaining unit described herein with respect to rates of pay, wages, hours of employment, or other conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All our production and maintenance employees at our plant in Hartsville, South Carolina, except for clerical and office employees and guards, professional employees and supervisors as defined in the Act.

All our employees are free to become or remain members of this union, or any other labor organization.

JOY SILK MILLS, INC.,
(Employer)

Date..... By.....

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

* * * * *

863 Filed Jun. 15, 1949

Exceptions of Joy Silk Mills, Inc., to the Intermediate Report and Recommended Order of the Trial Examiner.

Joy Silk Mills, Inc., Respondent in the above entitled matter, by its counsel, excepts to the Findings of Fact, Conclusions of Law, and Recommended Order contained in the Intermediate Report and Recommended Order of Trial Examiner George E. Downing dated May 27, 1949, as follows:

1. To the Trial Examiner's finding of fact that the telephone conversation of September 24, 1948, was substantially as testified to by Jacobs (IR 8, lines 14-33.)
2. To the Trial Examiner's finding of fact that Jacobs impliedly claimed that the union represented a majority of the employees in the unit when talking with Respondent on September 24, 1948 (IR 10, lines 5-14.)
3. To the Trial Examiner's finding of fact that the telephone call from Jacobs to Gilbert on September 24, 1948, constituted a request to bargain and that "although Jacobs

made no express demand to bargain at the September 30 conference, such a demand was clearly to be implied from his offer to Fox to agree to a cross check in lieu of an election and his offer to 'obviate all this' if the union could get a contract" (IR 10, lines 27-33.)

4. To the Trial Examiner's finding of fact that: "On the evidence in the record as a whole it is conclusive and found that Respondent held Carpenter out to its employees as its agent, and indeed as a part of its managerial staff and that to the extent that his acts and his statements to the employees are of a coercive nature they are attributable to Respondent." (IR 15, lines 39-43.)

5. To the Trial Examiner's finding of fact that the incidents in which Raymond Russell was involved "occurred substantially as testified to by the General Counsel's witnesses." (IR 20, lines 40-41.)

864 6. To the Trial Examiner's conclusion of law that "the announcement of promise of rest periods at Respondent's expense, contained in the Gilbert statement of October 12, and Gilbert's promise after the reading of his statement on October 18, that he would start shift rotation if a majority of the employees voted for it" were coercive and that Respondent thereby engaged in interference, restraint, and coercion in violation of Section 8(a)(1) of the Act. (IR 22, lines 50-51; 23, lines 1-4, 26-29).

7. To the Trial Examiner's conclusion of law that "the inquiries by Carpenter as to how employees would vote in the election and as to their union membership, views, and attitudes, his threat that Gilbert probably would close the mill if the union came in; and his implied threat to O'Neal that his job would be affected by his vote" were coercive and that Respondent thereby engaged in interference, restraint and coercion in violation of Section 8(a)(1) of the Act (IR 23, lines 47-52; 24, lines 23-25.)

8. To the Trial Examiner's conclusion of law that "the inquiries by Russell as to employees' interest in, views toward, and membership in the union and as to how they intended to vote in the election; his inquiries as to union meetings and activities and his solicitation of employees assistance in obtaining such information; his implied threat that an employee would not receive a contemplated increase if the union came in; his implied threat that if an employee voted for the union, she would lose her shift, were coercive in nature and Respondent thereby engaged in interference, restraint, and coercion in violation of Section 8(a)(1) of the Act (IR 24, lines 8-17, lines 23-25.)

9. To the Trial Examiner's conclusion of law that "Respondent's acts of interference and coercion on October 12, 18 and 19, as herein found, demonstrated that whatever doubts it had previously entertained were no longer genuine, that it no longer had reason to believe the union's claim of a majority was untrue, and that it sought to evade its obligation to recognize and to bargain with the union" (IR 24, lines 40-47.)

10. To the Trial Examiner's conclusion of law that Respondent, by its acts on October 12, 18, and 19, 1948, and since, has refused to bargain collectively with the union as the exclusive representative of its employees in an appropriate unit and thereby deprived its employees of the rights guaranteed by Section 7 of the Act (IR 25, lines 13-17.)

11. To the Trial Examiner's conclusion of law that Respondent, by the inclusion in the questionnaire of
865 questions Nos. 7, 8, 9, 10, 13, 14, 21, and 25, engaged in interference, restraint, and coercion within the meaning of Section 8(a)(1) of the Act (IR 28, lines 48-52.)

12. To the Trial Examiner's conclusion of law that "By refusing on or about October 12, 1948, and at all times thereafter to bargain collectively with United Textile Workers of America, A.F.L., as the exclusive representative of all

its employees in the aforesaid appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act (IR 30, lines 10-14.)

13. To the Trial Examiner's conclusion of law that "By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act." (IR 30, lines 16-19.)

14. To the Trial Examiner's recommendation that Respondent cease and desist from "refusing to bargain collectively with United Textile Workers of America, A.F.L., as the exclusive representative of all its employees in the unit heretofore found appropriate with respect to rates of pay, wages, hours of employment, or other conditions of employment (IR 30, lines 33-38.)

15. To the Trial Examiner's recommendation that Respondent cease and desist from "in any other manner, interfering with, restraining, or coercing its employees in the exercise of their right of self-organization, to form labor organizations, to join or assist United Textile Workers of America, A.F.L., or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act." (IR 30, lines 40-47.)

16. To the Trial Examiner's recommendation that Respondent "Upon request, bargain collectively with United Textile Workers of America, A.F.L., as the exclusive bargaining agent of all its employees in a bargaining unit described herein with respect to rates of pay, wages, hours of employment, and other conditions of employment, and if an understanding is reached, embody such understanding

in a signed agreement," and post notices at its Hartsville, South Carolina, plant (IR 30, lines 53-61.)

866 The foregoing exceptions to the Intermediate Report and Recommended Order of the Trial Examiner will be supported by arguments to be advanced in a brief to be filed by Respondent in accordance with Section 203.46(a) of Rules and Regulations, Series 5, National Labor Relations Board.

Respectfully submitted,

HENRY J. FOX

JAMES F. KENNEY

Posner, Berge, Fox & Arent
1002 Ring Building
Washington, D. C.

* * * * *

A-1

Filed Sep. 17, 1949.

IN THE

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 10,433.

JOY SILK MILLS, INC., a Corporation, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

**Petition for Review of, and to Set Aside, an Order of
National Labor Relations Board.**

Now comes Joy Silk Mills, Inc. (hereinafter referred to as Petitioner), by its attorneys, and petitions this Honorable Court to review and set aside an Order dated September 13, 1949, of Respondent, National Labor Relations Board (hereinafter referred to as the Board), by which it is aggrieved and its interests are adversely affected, and respectfully shows to the Court:

1. Petitioner is a corporation duly organized under and existing pursuant to the laws of the State of South Carolina. It maintains its principal office and place of business at Hartsville, South Carolina, where it is now and has been since 1936 continuously engaged in the business of processing yarn and thread, i.e., the twisting, throwing and other processing of yarn and thread.

2. This Court has jurisdiction of this proceeding pursuant to the provisions of Section 10(f) of the National Labor Relations Act, 49 Stat. 452, 29 U. S. C., § 151, *et seq.*, as amended by the Labor-Management Relations Act 1947, 61 Stat. 146, 29 U. S. C., § 141, *et seq.*, (hereinafter referred to as the Act). The nature of the proceeding as to which review is sought is as follows:

A-2 (a) On February 24, 1949, the General Counsel of the Board issued a complaint against Petitioner (Board Case No. 10-CA-545) alleging that Petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and (5) and Sections 2(6) and (7) of the Act. The complaint was based upon an amended charge filed October 29, 1948, by United Textile Workers of America, affiliated with American Federation of Labor (hereinafter referred to as the Union). The complaint alleged in substance that on and after September 15, 1948, Petitioner, by its officers, agents, and employees interfered with restrained and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act; and that Petitioner on or about September 23 and 24, 1948, and thereafter, refused to bargain collectively with the Union which represented a majority of Petitioner's employees in an appropriate unit, as the exclusive representative of the employees in such unit since on or about September 16, 1948, in violation of Sections 8(a)(1) and (5) of the Act.

(b) On March 5, 1949, Petitioner duly served and filed its answer to the complaint admitting that it was engaged in

interstate commerce within the meaning of the Act, but denying that it had engaged in any of the unfair labor practices within the meaning of the Act as alleged in the complaint.

(c) Pursuant to notice, a hearing was held on March 22 through 25, 1949, in Hartsville, South Carolina, before a Trial Examiner designated by the Board. On May 27, 1949, the Trial Examiner issued an Intermediate Report and Recommended Order in which he concluded that Petitioner had engaged in certain unfair labor practices and recommended that the Board order Petitioner to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization. He further recommended that the Board order Petitioner to bargain collectively with the A-3 Union upon request and to take certain other affirmative action.

(d) On May 27, 1949, the Board issued its order transferring the case to, and continuing it before the Board for decision and order.

(e) On June 14, 1949, Petitioner duly served and filed with the Board its Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner, challenging the propriety and legality of certain of the Trial Examiner's findings and recommendations which were adverse to Petitioner.

(f) Petitioner requested permission to present oral arguments in support of aforesaid Exceptions before the Board but such request was denied. The Decision and Order complained of herein was rendered by Board members John M. Houston, James J. Reynolds, Jr., and Abe Murdock on September 13, 1949, and served upon Petitioner on September 14, 1949. A copy of said Decision and Order is attached hereto and made a part hereof as Appendix A.

3. The points upon which Petitioner intends to rely for the relief hereinafter requested are as follows:

(a) Certain material Findings of Fact upon which the Board predicated its Order are erroneous because they are

contrary to the evidence in the record considered as a whole and said Findings are unlawful because they are not supported by substantial evidence upon the record considered as a whole.

(b) The Conclusions of Law upon which said Order is based are contrary to law because they are either unsupported by the Findings of Fact or predicated upon erroneous Findings of Fact and are unsupported by the record considered as a whole.

(c) Said Order is arbitrary and capricious, constitutes an abuse of discretion and exceeds the powers vested in the Board.

(d) Said Order is beyond the jurisdiction of the Board because it deprives Petitioner of a substantial right granted to it by Section 9(c)(1)(b) of the Act.

A-4 (e) Said Order is invalid because the Board, despite Petitioner's Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner, failed and refused to find that Petitioner had not engaged in acts constituting unfair labor practices within the meaning of the Act and failed and refused to conclude that the Complaint should be dismissed.

(f) In addition to the points specifically set forth hereinabove, the failure of the Board to recognize, approve and grant the various exceptions set forth in Petitioner's Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner, a copy of which will be part of the transcript of record to be filed herein, is erroneous and contrary to law.

WHEREFORE, Petitioner prays:

1. That a certified copy hereof be forthwith served according to law upon the Board and that the Board be required in conformity with law to certify to this Court a transcript of the record in the proceedings wherein said Order was entered, including the pleadings, testimony, evidence, exhibits introduced, Intermediate Report and Re-

commended Order of the Trial Examiner, Exceptions to the Intermediate Report and Recommended Order of the Trial Examiner, and the Findings, Conclusions, Decision and Order of the Board.

2. That said Proceedings, Findings, Conclusions, Decision and Order be reviewed by this Court; that said Order be set aside, vacated and annuled in its entirety; and that the Board be ordered to dismiss the Complaint against Petitioner.

3. If the next preceding prayer for relief is denied, then, in that event, that this Court modify said Order of the Board, by setting aside, vacating and annulling the parts thereof which are erroneous and unlawful.

4. That this Court exercise its jurisdiction and grant to Petitioner such other and further relief in the A-5 premises as the rights and equities of the cause may require and may seem just and proper to this Court.

HENRY J. FOX,
JAMES F. KENNEY,
Attorneys for Petitioner,
1002 Ring Building,
Washington 6, D. C.

Of Counsel:

POSNER, BERGE, FOX & ARENT,
1002 Ring Building,
Washington 6, D. C.

* * * * *

A-43 Filed Oct. 28, 1949.

Answer of National Labor Relations Board to Petition for Review of and to Set Aside its Order and Request for Enforcement of Said Order.

To the Honorable, the Judges of the United States Court of Appeals for the District of Columbia Circuit:

Comes now the National Labor Relations Board, herein called the Board, and pursuant to the National Labor Re-

lations Act, (61 Stat. 136, 29 U.S.C., Supp. I, Sec. 141, *et seq.*), hereinafter called the Act, files this answer to the petition for review of and to set aside an order issued by the Board against Joy Silk Mills, Inc., petitioner herein, and the Board's request for enforcement of said order.

1. The Board admits the allegations contained in paragraph 1 of the Petition for Review.

2. The Board admits the allegations contained in the first sentence of paragraph 2, namely, that this Court has jurisdiction of this proceeding pursuant to the provisions of Sec. 10 (f) of the Act, and as to the remaining allegations contained in paragraph 2, the Board prays reference to the certified transcript of the record, filed herewith, of the proceedings heretofore had herein, for a full and exact statement of the pleadings, evidence, findings of fact, conclusions of law, and order of the Board, and all other proceedings had in this matter.

A-44 3. The Board denies each and every allegation of error contained in paragraph 3 of the Petition for Review.

4. Further answering, the Board avers that the proceedings had before it, the findings of fact, conclusions of law, and order of the Board were and are in all respects valid and proper under the Act.

Further answering, the Board, pursuant to Sec. 10(e) of the Act, respectfully requests this Honorable Court for enforcement of its order issued against petitioner on September 13, 1949, in the proceedings designated on the records of the Board as Case No. 10-CA-545, entitled: "*In the Matter of Joy Silk Mills, Inc. and United Textile Workers of America, A. F. L.*"

5. In support of this request for enforcement of its order, the Board respectfully shows:

(a) Joy Silk Mills, Inc., a South Carolina corporation, is engaged in business at Hartsville, South Carolina. This Court has jurisdiction of the Petition for Review herein and of the request for enforcement by virtue of Sections 10 (e) and (f) of the Act.

(b) Upon proceedings had in said matter, as more fully shown by the entire record thereof, certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on September 13, 1949, duly stated its findings of fact and conclusions of law and issued its order directed to petitioner, and its officers, agents, successors, and assigns. The aforesaid order provides as follows:

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Joy Silk Mills, Inc., and its officers, agents, successors and assign shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with United Textile Workers of America, A. F. L. as the exclusive representative of all production and maintenance employees employed by the Respondent at its Hartsville, South Carolina, plant, excluding clerical and office employees, guards, professional employees, and all supervisors as defined in the Act;

A-45 (b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist United Textile Workers of America, A. F. L., or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection and to refrain from any or all such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as condition of employment as authorized in Section 8 (a) (3) of the Act as guaranteed by Section 7 thereof.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain collectively with United Textile Workers of America, A. F. L., as the exclusive representative of all its employees in the above-described unit with respect to wages, rates of pay, hours of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) Post at its plant at Hartsville, South Carolina, copies of the notice attached hereto and marked Appendix A.⁷ Copies of said notice, to be furnished by the Regional Director for the Tenth Region, shall, after being duly signed by the Respondent's representative, be posted by the Respondent immediately upon receipt thereof and maintained by it for sixty (60) consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material;

(c) Notify the Regional Director for the Tenth Region, in writing within ten (10) days from the date of this Order, what steps the Respondent has taken to comply herewith.

(c) On September 14, 1949, the Board's Decision and Order was duly served upon the petitioner.

(d) Pursuant to Section 10 (e) and (f) of the Act, the Board has certified and filed with this Court a transcript of the entire record in the proceeding.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement, and the filing of the certified transcript of the

⁷ In the event that this Order is enforced by decree of a United States Court of Appeals, there shall be inserted before the words: "A DECISION AND ORDER," the words: "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING."

entire record in this proceeding to be served upon petitioner, and that this Court take jurisdiction of the A-46 proceedings and of the questions to be determined therein, and make and enter upon the pleadings, evidence, and proceedings set forth in the entire certified record of said proceedings, and upon the order set forth hereinabove, a decree denying the petition to review and set aside and enforcing in whole said order of the Board, and requiring petitioner and its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 27th day of October, 1949.

/s/ A. NORMAN SOMERS,
Assistant General Counsel,
NATIONAL LABOR RELATIONS BOARD

* * * * *

EXHIBITS.

761 Board's Exhibit 4.

STATEMENT OF

This statement is made this day of March 1949 to the Attorney for Joy Silk Mills, Incorporated. I thoroughly understand that this statement is completely voluntary and made without promise, threat, or coercion of any kind.

1. What is your name, address, and place of employment?
2. How long have you been employed in your present job?
3. Did you work for the same Company on September 15, 1948?
4. Have you worked for the same company continuously since September 15, 1948?
5. Have you ever signed any card in connection with Union activities?
6. What was the nature of that card?
7. What did you consider to be the purpose of signing the card?

8. Did you consider yourself a member of the Union when you signed the card?
9. At the time you signed the card, did you pay any money for membership or other fees in the Union?
- 762 10. Did you agree to the future payment of any membership, initiation or other fees to the Union?
11. Did you ever ask the Company to bargain with the Union concerning wages, hours and working conditions? If so, please state the facts.
12. Did any member or representative or organizer of the Union at any time tell you that the Union asked the Company to bargain with the Union concerning rates of pay, wages, and hours for employment and general working conditions?
13. Did you terminate your connection with the Union at any time after you signed the card?
14. If so, for what reason did you terminate your connection with the Union?
15. Have you at any time been questioned by Mr. Gilbert, Mr. Southerland, Mr. Russell, or Mr. Carpenter, concerning your Union activities, membership, desires or sympathies? If so, what were the circumstances?
16. Did anyone at any time threaten and warn you to refrain from any Union activities? If so, what were the circumstances?
17. Did anyone at any time promise you any promotions, rewards or other benefits if you would refrain from Union activities? If so, what were the circumstances?
- 763 18. Was any representative of the Company other than shop employees ever present at any Union meeting or other activity? If so, who was this person and what were his actions?
19. To your knowledge, has any Company official or representative of the Company spied upon any Union member or Union activities?
20. Did anyone representing the management of the Company ever approach you and request that you spy upon

and report to the Company upon Union meetings, leaders, activities, members or other facts concerning Union activity?

21. Did you cast your vote at the election solely according to your own personal views concerning whether you desired the Union to represent you and without any fear or threats as to your job and future with the Company and without being influenced in any respect by promises of future benefits by the Company?
22. Are you acquainted with Fred Carpenter? What are his duties as you understand them?
23. To your knowledge, has Fred Carpenter ever hired, discharged, or disciplined an employee? If so, what were the circumstances?
24. Did you hear the statements read by the management of the Company relative to the election which was held in the Plant on October 19, 1948?
25. Did you consider that those speeches or the statements and notices posted on the bulletin board were threats or promises of benefits to influence your vote against the Union?
- 764 26. Did you hear any discussion or conversation between Fred Carpenter and Mr. Mosely, a representative of the Union, on the morning of the election on October 19, 1948? If so, state what you heard.
27. On the day of the election, did any Company official or foreman conduct himself in an unusual manner which interfered with the exercise of your right of free speech or, to your knowledge, the right of free speech of any other employees?
28. Additional Facts:

I, ..., have read the foregoing questions and answers and do certify that they are true and correct and made voluntarily to the representative of the Company.

Dated: March, 1949

Witness:

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Petitioner's Exhibit 4.

CHARLOTTE OFFICE
AMERICAN FEDERATION OF LABOR

William Green, President
George Meany, Secretary-Treasurer

Earle R. Britton, Organizer
American Federation of Labor
3215 Wilmot Avenue, Columbia, S. C.

Organizer
Labor Temple, 317½ North Tryon Street
Charlotte, North Carolina
Columbia, S. C., September 23rd, 1948

Mr. S. C. Gilbert, President
Joy Silk Mill, Inc.,
Hartsville, S. C.

Dear Mr. Gilbert:

I have more than thirty per cent of the employes of the Joy Silk Mill, Inc., who have signed cards authorizing the United Textile Workers of America to bargain for themselves under the Labor Management Relations Act of 1947. As a representative of the American Federation of Labor, the United Textile Workers of America one of our affiliated International Unions, I am proceeding to petition the National Labor Relations Board to order an election in the plant of the Joy Silk Mill. Should you be willing to have a consent election I believe it will be to the advantage of all concerned.

May I have as early a reply as possible.

Yours very truly

EARLE R. BRITTON, Organizer
American Federation of Labor
3215 Wilmot Avenue
Columbia, South Carolina

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Petitioner's Exhibit 12.

NATIONAL LABOR RELATIONS BOARD

TENTH REGION

ATLANTA NATIONAL BUILDING

ATLANTA, GEORGIA

October 1, 1948

Mr. Henry J. Fox, Attorney
1200 18th St., N.W.
Washington, D. C.

Re: Joy Silk Mills, Inc.
Hartsville, S. C.
Case No. 10-RC-380

Dear Sir:

This is an account taken from my notes of the joint conference held in the company's office at Hartsville, South Carolina, on September 30, 1948, at approximately 10:30 in the morning. Present for the company was Mr. Henry J. Fox, attorney, of Washington, D. C., Mr. H. D. Southerland, Plant Superintendent and Mr. Joseph Jacobs, Southern Director for United Textile Workers of America, A.F.L., and Mr. P. Mark Patterson, Field Examiner for the National Labor Relations Board.

Mr. Fox stated that the company was slightly in doubt as to their status due to the fact that the nature of their business had changed considerable within the last few months, namely, that before this time they received a great deal of work from outside of the state and shipped it to firms outside of the state. At the present time, they are doing practically all of their work for firms located inside the boundaries of the State of South Carolina. Mr. Fox further stated that the firm does not buy any raw material and does not ship a product in its own name. That it works on thread furnished by another company and after processing that thread returns same to the company

on a commission basis. However, Mr. Fox stated that the firms who own the thread on which the Joy Silk Mills works are assumed to be firms in interstate commerce. He said that he was requesting sufficient time from the Board to give Mr. C. S. Gilbert, President of the Company, an opinion as to whether or not that placed the firm in the position of effecting interstate commerce. Mr. Patterson stated that he would be glad to cooperate and extend a reasonable length of time for the company to file such an opinion with Mr. C. S. Gilbert. Mr. Fox assured Mr. Patterson that the company was not looking for dilatory tactics and not seeking to delay the election in this case.

821 There was some discussion and the company tended to question the authenticity of the cards. Mr. Patterson explained that the cards would not be made open to the company for challenge in spite of the offer of Mr. Jacobs to conduct a cross-check. The cross-check is no longer part of the Board's procedure. Mr. Patterson said that he would be glad to check the cards against the signatures of the individuals in the office if it was the desire of the company. However, due to the lack of time and the fact that Mr. Fox found it necessary to leave for Washington such time was not available and such a check of the cards was not made. Mr. Patterson expressed the opinion that insofar as it was possible for him to tell the cards which he had in the file were genuine.

The following tentative election arrangements were made. If the Consent Election is received by this office by October 6th, or 7th, the election will be held on October 19, 1948. The election will be held in the plant in the canteen. The company will furnish the booths and tables and it will be held on company time. The Payroll of October 2, 1948 will be the controlling payroll. The hours of the election will be from 6:45 a.m. to 7:15 a.m. and from 2:30 p.m. to 3:30 p.m. The company furnished the Field Examiner with the most recent payroll showing a listing

of 57 workers who would be involved in the unit as petitioned for. The company, at this time, also furnished a interstate commerce questionnaire filled out. It will be noted that on the questionnaire, question number 15 is marked, "No". If in Mr. Fox's opinion the company is in the state of effecting interstate commerce that will be changed in the form of a letter concerning interstate commerce. It will be noted that question number 11 on the questionnaire in which the principal finished products made by us are processed yarn over 125,000 pounds per year, the approximate value appears to be something over \$250,000.00 a year. It will be noted that this does not mean that the company owns or buys the material, simply that they work on that amount of material on a commission basis.

Mr. Patterson was assured by the company that the correct name of the company was the Joy Silk Mills, Inc., a South Carolina corporation, main office and only plant in Hartsville, South Carolina.

I wish to take this opportunity to express my appreciation to all of the parties involved in this conference for the splendid spirit of cooperation, shown. I sincerely hope that the company and the union will both decide to sign the Consent Election Agreement and that the procedure may be expedited as much as possible.

Very truly yours,

P. MARK PATTERSON
Field Examiner

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Petitioner's Exhibit 5.

October 7, 1948

NOTICE

The United Textile Workers Union has filed a petition with the National Labor Relations Board claiming that it represents a majority of the employees, with the exception of the office and the supervisory employees. An elec-

tion has been ordered by the National Labor Relations Board on Tuesday, October 19, at which you will decide whether you wish to have the Union represent you, or whether you prefer to continue to deal directly with me on matters and working conditions.

You have a right to join the Union if you wish to do so. On the other hand, I want to emphasize that it is not necessary to Join the Union if you do not want to. Some of you may wonder if the fact that you signed a card distributed by the Union requires you to vote for the Union. The answer is "no" This election will be by secret ballot. No one can possibly find out how you vote. Vote exactly as your conscience tells you—either for or against the Union.

Less than two years ago this same Union claimed that it represented a majority of you. At a fair election the Union was defeated by an overwhelming vote. After this drastic defeat, the Union made irresponsible charges that the Company had threatened and improperly influenced many of you to vote against the Union. These charges were dropped for the obvious reason that there was no basis for them. To eliminate the possibility that the Union will adopt these same tactics this time, I want to make very clear to you that regardless of how you vote in this election it will make no difference so far as your job with the Company is concerned. Nor will it affect in any matter our present policy of improving wages and working conditions to the limit of our ability. I want to emphasize that you are entitled to vote according to your own personal opinion, regardless of what my personal opinion or your supervisors' opinions, or the Union's opinion may be.

Sincerely,
S. C. GILBERT

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Petitioner's Exhibit 6.JOY SILK MILLS
INCORPORATEDHartsville, S. C.
October 19, 1948

Now that the election is over, I hope that all differences of opinion on this subject are gone and that peace and harmony will be restored. The election was secret and fair and each of you was entitled to vote the way you thought best. However, in accordance with our democratic tradition of letting the majority rule, I urge all of you to forget your differences and cooperate for our mutual benefit and progress.

To those of you whose votes showed confidence in the Company, I want to thank you sincerely for your loyalty. To those of you who voted in favor of the Union, I want to say that I respect your right as an American Citizen to vote according to the dictates of your conscience.

I want to repeat, as I said many times before the election, that there will be no discrimination of any type against supporters of the Union nor favors or rewards to those who opposed it. We will continue our policy of treating all of you on an equal basis. We will continue to improve your working conditions as rapidly as possible and to the utmost of our ability. The sooner we can forget the commotion that has disturbed us during the past few weeks and return to a sincere, friendly, family spirit, the quicker will be our progress.

S. C. GILBERT

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Petitioner's Exhibit 7.STATEMENT TO EMPLOYEES BY S. C. GILBERT
ON OCTOBER 12, 1948 11:45 A. M.

A number of you have asked that I call you together to explain to you what my opinions are concerning the secret

election we are going to have to determine whether you want the union to represent you. There will be a notice which describes your legal rights under the National Labor Relations Act. I am going to read this talk to you so that at a later date the union will not be able to claim that I made statements which were designed to threaten your jobs or to influence you improperly against the union.

We have worked together for many years. Not only do you have the right to learn how Mr. Sutherland and I feel about this election but we owe you an obligation to tell you exactly what our position is. Very briefly we both feel most sincerely that you don't need a union because it cannot accomplish any results for you which you could not achieve without it. The only ones who would profit from having a union in this mill are the union officials themselves whose operations are financed by the dues and assessments which they collect from their members. However, if you think differently and want the union in here, you have the right to vote for it. The election is secret and you can express your views by your vote without fear of what the union organizers will do or say and without concern about what Mr. Sutherland and I feel.

798 The sole purpose of this election is to determine whether you want the union to do your talking for you about wages and working conditions in return for the dues and assessments and obligations which you must assume or whether you want to continue, as we have done these many years, to work out your problems with me directly. This election is very important—much more important than some of you think. The decision you must make is vital because it concerns you, your families, your jobs and the Company's future.

You are all familiar with the efforts of this same union to come into the plant a little less than two years ago. The union claimed then, just as they are claiming now, that a majority of you wanted the union in here. I didn't then and I don't believe now that you want the union. That is

why we are going to have this secret election where you will have an opportunity to vote according to the way you think is best for yourselves. You rejected the union by an overwhelming vote two years ago, and I feel that your decision was completely justified. I believe you will agree that we have accomplished wonderful progress without the union since that election. I feel confident that your decision will be the same in this election.

I understand that some of you may have signed union membership application cards or pledge cards. Don't worry about these cards, because they are not binding on you in any manner so far as this election is concerned. The Government recognizes that some of you may have signed such cards without due consideration or under pressure. One of the reasons why this election is secret is to give you an opportunity to express your real desire in the matter without regard to such pledge cards or the Company's views.

799 Many of you have heard the union's side of this picture. I don't know what the union has promised you. You must realize, of course, that it is simple to make promises when you have no responsibility in fulfilling them. It is much more important to consider actual accomplishments and real facts when you are deliberating this problem. I can say without fear of slightest contradiction that I have never made a promise or commitment which has not been filled in the most complete and liberal manner. Let us briefly look at the Company's record. I know that you share my pride in what we have accomplished here. As a result of our joint efforts, we have built the finest mill of this type in the whole country. A great many of you have seen this mill grow up from the very ground. In fact, many of you have seen the new equipment installed as the mill grew from year to year. This plant has been like a second home to many of you. Above all I am proud of the fact that we have met and solved our problems without fuss or trouble. No matter what happened we could always sit

down and talk it out and come to a happy and reasonable conclusion. We have never needed long, costly strikes with bitter feeling and even bloodshed, which the papers have described during these past several years. Nobody has ever had to take up collections to feed you during any strike.

Don't think that your sincere and loyal cooperation has not been fully appreciated during all these years. We in turn have always striven to the utmost of the Company's financial ability to repay you with the finest wages and the best working conditions in this type of plant which exists anywhere in the country. And while I am speaking of the Company's appreciation of your efforts, I want to take this opportunity to thank you for your magnificent cooperation

in solving one of our most serious troubles in recent 800 years. You all know that our industry is a highly competitive one. During this past summer we lost several of our most important customers because they claimed the quality of our work was not as good as they could get elsewhere. In order to insure the future of the Company, as well as the security of your jobs, we were compelled to meet this challenge to the very existence of the Company by raising the quality of our work to equal any produced by our competitors. Naturally this required more rigorous efforts from all of us. I am indeed proud of the manner in which you accepted this challenge to the Company's future, and I am happy to say that our customers have complimented us on the vast improvement in our work.

I wonder how many of you realize that every cent this Company has ever earned from the operations of this mill has been plowed back into improvements in the mill and improvements in your wages and working conditions. Our mill is the most modern in the industry. No expense has been spared to make your working conditions pleasant and as ideal as possible. Many of you have never worked in any other mill so that you can't fully appreciate the importance of our clean working conditions, our freshly painted walls,

our scientific lighting, our sanitary rest rooms and our modern equipment. Most important, unless you have had experience with other mills, you may be unaware of the difference between working here where we have our friendly informal personal relations and attitudes as compared with the rigid impersonal relation between management and employees which prevails elsewhere. As soon as equipment for the canteen which has been ordered arrives, you will be given a rest period at the Company's expense so that you may eat your lunches and relax in comfort during your shift.

One important thing, of course, that all of us are thinking about is wages. Even though I believe most of you
 801 are satisfied that we are paying maximum wages for this industry and that you are among the best paid employees in this area, we should discuss this subject briefly. What is the source of your wages? They come from the money received from the sale of our service to our customers. In order for us to sell our service to provide the money for your wages, we are compelled to set a price for our service which meets our competitors. If our price is too high, or if the quality of our service is insufficient, we lose our customers. Similarly, if our wages are too high, we lose money and obviously couldn't stay in business. Thus, it is apparent that what we can pay is limited by factors beyond our control. One thing is certain, we have always paid you maximum wages and kept a minimum return for the Company throughout all the years of our existence. One thing further I promise you, we shall continue this policy so that it will never be necessary for you to call in a union to try to improve your wages or working conditions. You will get no less or no more regardless of whether there is a union here. We will always do the best to the utmost of our ability.

There is ample proof that this statement is a fact and not an idle boast. Just recall how rapidly your wages and take home pay have been increased voluntarily by the Company during the past few years. On January 1, 1941, your aver-

age wage rate was 32½c per hour. The Company has voluntarily given 9 wage increases since 1941 as well as extra shift differentials and automatic tenure increases so that the average hourly rate today is approximately 88c. It seems to me that the record speaks for itself in a more convincing fashion than any statements I could use to describe it.

On September 16th we awarded a week vacation with pay. As soon as you employees decide when you would prefer your week of paid vacation, we will establish the date 802 for these vacations. You didn't need the union to get the paid vacation for you. The Company appreciates the importance of such a vacation and readily gave it to you when it was financially able to do so.

The Company is facing a critical new era. It has grown out of its adolescent stage and is now a new and modern plant ready to make its mark in this industry. We are now experimenting with relatively new types of fibers. We have new and stronger competition than ever before. There must be complete cooperation between you and the Company if we are going to succeed for our mutual benefit. Your future, as well as my future, in this Company is at stake. You must now ask yourselves what the union can do for you that you cannot do for yourselves. You must also ask yourselves why it is that total strangers have suddenly become so interested in your welfare. Who are they and what have they done? What more can they do for you than you have done for yourselves? Ask yourselves whether the management that built this mill from the very ground and built its business through your complete cooperation is best for you in the long run. You will have to decide whether your interests and the Company's are the same or whether your interests and those of the union are the same. In other words it boils down to this, is your position under Mr. Sutherland's and my leadership something that you can improve by choosing a union to represent you.

Again I want to say, regardless of what your decision may be in this very important matter, my personal affection for you and my constant desire to do the best I can for you will never diminish.

* * * * *

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Petitioner's Exhibit 8.

STATEMENT TO EMPLOYEES BY S. C. GILBERT
ON OCTOBER 18, 1948.

Last week I spoke to you about the union trying to sign you up. Since then many of you have approached Mr. Southerland and me and asked us questions about the coming election. I am very pleased that you are asking these questions. It shows that you are intelligent and are trying to get the real facts so that you can arrive at the correct answer to this problem. It shows to me that you will not be easily fooled by a lot of wild rumors and exaggerated statements and irresponsible promises which are being circulated by the union. It shows that you are giving this matter serious thought which it deserves because it affects very vitally not only your future but that of your families and the company. When I spoke to you last week I told you then, and I repeat now, that you may vote for the union if you want it, regardless of how Mr. Southerland and I feel about it. But again I want to emphasize that even if you signed a union application card you may disregard such cards and vote against the union in this election.

There have been some very irresponsible rumors circulating around the plant. I think it is important for us to bring them out into the open so that we can see the real facts and understand the basis and the tactics which the union employs. One vicious rumor is that you had better join the union now or you will lose your job later after the union gets in. There is a similar rumor that unless you join the union you won't be treated as well as the
804 union members. There is not a single grain of truth in these wild statements. *I want to tell you with all*

sincerity that no matter how the election goes the time will never come that you will have to join the union to keep your job in this Company or to improve your working conditions or to have equal opportunities with anyone else. The union cannot and will not be able to make your jobs more secure or more steady or improve your working conditions in any respect or any more rapidly than I will do it for you. The union can make promises. But can it keep them? You all have known Mr. Southerland and me for many years. You are completely familiar with our 100% record of never failing to keep any promise or commitment that we have ever made.

One thing you must keep in mind. The first initiation fees that you pay the union are only the beginning. You must keep paying dues and assessments which are determined by the union officials. The union is a big business and must support hundreds of officials all over the country. Union dues and assessments must be poured out to support strikes all over the country and to pay expensive traveling accounts and salaries of high union officials that you will never see.

In almost all cases where this particular union has organized employees it has asked the Company to deduct from your wages before you get your pay envelope all dues and assessments which are owing to the union. You have no choice as to whether you want to pay those dues and assessments. Also this union in almost all cases where it has organized a plant asks the company to agree to fire any employee who joins the union and who later quits it or is put out of the union for one reason or another. The Company has no choice in such a case even if you are satisfied with your job and the Company is completely satisfied with your work. Consider this situation carefully. This union is not a social organization. Don't think that you can lightly jump in and out of the union after you have satisfied yourselves that it can accomplish nothing for you but merely drains the pay out of your pay envelopes.

More employees are beginning to learn the real facts about unions during these past few years. You all know that the United States Congress passed the Taft-Hartley Act by an overwhelming vote because of the great abuses by these unions. The records show that the unions are losing more and more elections each week because the people are finding out the true facts now. Never in the history of the unions have they suffered so many defeats in elections. The reason is simple. The people no longer will be fooled by their idle promises and boasts.

You should consider carefully what has been accomplished here without the union. We have a model plant with the finest equipment in the industry. Your jobs are secure and steady and you are getting top pay and working conditions. Most important is the fact that you are working

for a company that has a genuine and sincere interest in your welfare. Mr. Southerland and I regard you as members of the family, not just an employee with a social security number. For many of you this was your first job and only job since the time you left school. We get a sense of personal satisfaction out of watching you develop and make progress right here in our own family group. I don't care how persuasive the promises of the union organizer may be, he will never convince me that the union which is run by a bunch of outsiders understands your problems and has your interests at heart in the way that Mr. Southerland and I have. If you will look back over the last few years you will be convinced that we have always done the very best for you within the limits of the Company's financial ability. There is not a single thing which the union could have done for you, because if it were possible to do anything more, we would have done it and have received a great deal of personal pleasure in doing it.

I would be very unhappy to have our close personal relationship disturbed by having a stranger from the outside come between us. Everything that we have now has

been accomplished without any union interference, without any union dues, and without following union rules. We have these things because we have cooperated and worked together. I firmly believe, and I believe you will agree with me, that it is poor business to swap something that we have now for a gamble on a pig in a poke.

There may still be a few of you who are leaning toward the union. I am talking to you especially today. I think you are still dazzled and confused by the rosy and
807 glittering promises that the union organizers have made. Let me try to help you by giving you some facts. Remember, it doesn't cost anything to make promises if there is no obligation to keep them.

Have you ever stopped to think why the union is trying to organize you? Do you realize that the union is a big business and has tremendous expenses? Who do you suppose pays the salaries and expenses of the organizers and their bosses all over the country? Where do you suppose the union gets the tremendous sums of money that it spends trying to organize plants and pay strike benefits to people who are walking the streets? It comes from only one place—out of your pay envelopes. Your dues might be worthwhile if the union could accomplish something for you here. But as I have told you before, it will get nothing for you here.

With all the labor trouble and strikes going on recently around the country it should not be hard for you to decide which way to vote. Who gets hurt most by those long drawn out strikes? The company? Yes. The unions? yes. But most of all the employees and their families. After the workers have marched up and down in the picket lines for weeks or months and their families have been hungry, what good does it do if the union squeezes a little extra out of the Company? It will take them years to catch up again on the pay they have lost. By the time they catch up they will probably be caught in another strike again if they listen to the union bosses. I know that you are not going to place

yourselves and your families in a position where you are
unable to make your own decisions about your future.

808 A few of you are still uncertain about whether you
have to join the union because you signed application
cards several weeks ago. The answer is "No." Those
cards do not mean a thing and put you under absolutely no
obligation so far as voting in this election is concerned. An-
other thing is definite. No matter how the election goes
you do not and will not have to join the union to work here
or to hold your job.

I am sure there is a question in your mind which I shall
gladly answer. What is the Company going to do for us in
the future? The best answer to that is the old proverb:
"Judge the future by the past." We have raised wages
and take-home pay almost 200% since 1941. We are giving
you a paid vacation. We have plowed back all the Com-
pany's earnings into building the most modern plant in the
industry with the best working conditions. We have taken
a personal and family interest in each and every one of you.
All of these things have been done without any union and
without your paying union dues and assessments. That is
the record and those are the facts on which you should base
your judgment as to whether the Company will continue to
do its best for you in the future.

I feel certain that most of you are against this union. But
you must remember that the majority vote will decide the
election. If you are opposed to the union you must be
certain to vote or else you will find that a small majority will
vote the union in. In other words, if you failed to vote you
would really be giving help to that small minority.

809 Again I want to repeat that this is a free country
and the union election is a free election where you
can cast your secret ballot whichever way you please. I
have tried to give you the facts so that you can make up
your mind as to what is best for you. As I have said before,
regardless of the outcome of this election, we will continue
to do the best we can for all of you.

* * * * *

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Petitioner's Exhibit 9.

STATEMENT BY MR. S. C. GILBERT TO EMPLOYEES ON
OCTOBER 18, 1948.

Tomorrow is the important day when you vote. Mr. Southerland and I have already told you how we feel about the union. I am sure that we will all be glad when the election is over and we can settle back to peace and harmony again. There are a few points about the voting tomorrow that I want to explain. The third shift will vote between 6:45 and 7:15 in the morning. In the afternoon the first and second shifts will vote between 2:30 and 3:30. You will all be given plenty of time in which to cast your ballot.

The election will take place in the canteen and will be under the supervision of a representative of the National Labor Relations Board. When you go to the canteen to vote you will be given a ballot similar to the sample ballot which is posted on the bulletin board. There are two little squares on the ballot. One square says "yes" and the other square says "no." If you want to vote against the union put your cross in the "no" square. "No" means no union. If you want to vote for the union then you put your cross in the "yes" square. I don't need to tell you that I hope that everyone of you votes "no."

The representative of the Labor Board will be there to help you and will guarantee that the election is secret. He doesn't care how you vote. However, it is his job to see that you get a chance to vote and that you have a free choice in the way you vote. As I have told you
811 before, you are under absolutely no obligation to the union even though you may have signed an application card or a pledge card recently. Those cards do not bind you in any way. The reason this is a secret election is to give you a chance to vote the way you wish after you have heard all the facts on both sides.

The union has made a lot of big promises and circulated many vicious rumors. It seems as though the nearer we

come to the time to vote the more desperate the union is getting. It is promising bigger things and making more vicious threats. Why there is even a rumor that the union will freeze you people in your shifts so that certain of the union favorites will have preferences. I can assure you that the union will never dictate to this company in any way which will prevent us from handling these personnel matters in a democratic way which is most fair to the majority of you and most efficient for the company. The union has even said that the company is trying to mislead you on the shift rotation question. It said that even if a majority of you wanted rotation, the company wouldn't put it into effect, or else would only keep it in effect for a couple of weeks. That is just another untrue bit of union propaganda. This company has always followed the democratic principle of following the will of the majority and we will always follow that policy. Don't be fooled by these union tactics. The union realizes that it has no chance to win this election fairly and is willing to resort to any measures to get your vote.

There has been a lot of talk on both sides about this election. But when it comes to the final analysis you are really voting on who you want to have for your leader. Ask yourself why it is that these total strangers from the union have suddenly become so interested in your welfare. Inquire of your conscience whether we who built this factory from the very ground and have plowed every cent that we have ever earned back into improving the buildings and working conditions are better leaders for you in the long run than the union. You will have to decide whether your interests and the company's are the same, or whether your interests and the union's interests are the same. In other words, it boils down to the simple question: Is your future more secure under the leadership of Mr. Southerland and me, or is it necessary to choose some outsider for your leader?

Give serious thought to the way you will vote because it affects not only your welfare and the Company's future, but

the welfare of those who are dependent on you. Reason this problem out to your own satisfaction by asking yourself such questions as: To what kind of leadership will I be entrusting my future with the Company? Is that leadership unselfish and concerned only with my interests and welfare, or is there a self-seeking motive behind it? One thing is certain, if the union wins this election you will have lost your freedom of action. Decisions affecting your employment will be made by others, not by you. Efficient production may be handicapped by senseless restrictions. Cooperation will be replaced by disputes. The newspapers tell you the stories about what is happening in these matters. Two years ago you faced this same problem and made the right choice when you rejected the union by a tremendous vote. Your decision was completely justified if you will judge by the wonderful progress we have made since that union defeat.

The decision tomorrow rests entirely in your hands. You should cast your ballot without feeling that you are being influenced or intimidated by anyone. Vote exactly as you think best for yourself. I make only this one request of you. Be sure that you vote. Failure to vote is equivalent to voting for the union because the majority of those
 813 voting will decide the election. The results of this election are too important to you and your family and the Company to let somebody else make the decision for you. If you want to keep this Company on the same successful basis that it has been during all these years, and if you want to continue its progress and growth, go to the voting booth in the canteen tomorrow and make an X in the "no" square.

* * * * *

TESTIMONY.

43 **Mrs. Helen B. Watson**, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

* * * * *

Q. (By Trial Examiner Downing) Mrs. Watson, before the occasion of the reading of the letters had there been any rest periods in effect at the plant? A. No, sir.

84 Q. I believe you say that one of the things that was read to the employees was to the effect that there would be a twenty minute rest period? A. That is right.

* * * * *

95 **Joseph Jacobs**, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Marshall) State your full name and occupation for the record? A. Joseph Jacobs, Southern Director, United Textile Workers of America, the A. F. of L.

Q. What is your business address? A. 722 William Oliver Building, Atlanta, Georgia.

Q. Can you tell us first obtained information concerning the Joy Silk Mills in 1948? A. The first was a call from Mr. Dorsy Mosley, who is one of our International Representatives, in which he told me the people were organizing over at the plant and that he had had a call from Perry Hicks. Hicks did not know whether he had enough cards.

Q. Who is Perry Hicks? A. The President of our Local Union here at Hartsville. The printing company
96 wanted me to send some cards and he gave me some to give about the walk-out, or what appeared to be a walk-out. That was the first I knew of the situation here.

Q. That was about when? A. That was somewhere around the middle of September, around the 15th or 16th of September.

Q. What happened next after that? A. The next I knew it was on the 19th. I was in Winnsboro.

Q. That was the 19th of September? A. Yes, sir; and Earle Britton, President of the South Carolina Federation of Labor, turned over cards to me that had been signed by employees of the Joy Silk Mills and I talked with him

about it, about the situation here, and there was a discussion about the people returning to work and then he was going to make demands on the firm for bargaining, and then the next I knew about it was on—that was on a Sunday following the 24th. I called Joy Silk Mills. I had prepared a file on it at the office and I called the Joy Silk Mills to talk to Mr. S. C. Gilbert, who I had been informed was President. I tried to reach him by long distance, I think at 428 and I couldn't reach him there and a number 355 which I heard was a refractory or something of that kind. A man answered the phone and I asked if this was S. C. Gilbert, he said it was, I asked if he was president of the Joy Silk

Mills and he said he was. I told him I was the
 97 Southern Director of United Textile Workers of America, A. F. of L., and I was calling him to see whether he would recognize us a collective bargaining agent for production and maintenance employees at the plant, because we had been authorized to represent them, and that excluded the supervisory employees and clerical employees and others that are excluded under the terms of the National Labor Relations Act. He said he thought that had been settled before in an election at the plant.

Trial Examiner Downing: Just a moment, what was the date of that call? A. The 24th of September. I told him I understood there had been an election but that had been some years ago. He said he was under the impression it was about a year ago, and I said that in any event that as long as it was over a year that means we have a right at any time to ask for collective bargaining rights and that this question of a year would come up only in the event the company objected. He said, "no he would prefer that the Board handle it." I then said there were other ways of doing it instead of having an election and I said we would make a cross check of the cards so that he and myself might be able to agree upon some person who would be impartial, and we could trust, and who would turn the cards over to them, and he would turn the pay roll over and check

to see whether or not we had a majority and if we had, we could arrange a stipulation in the agreement and be recognized.

98 Q. Did he agree to that? A. No, sir, he said he preferred to let the Board handle it. When I saw we couldn't work by any other method, I asked what his attitude would be to a consent election. He said he didn't know, but would prefer letting a regular routine take place through the National Labor Relations Board. I told him, well, if he preferred that way I would go ahead and file the Petition, and he would probably hear from the Board. I think some pleasantries were exchanged, that I would probably see him to arrange for the election. I believe that was all.

Q. During the conference how many times did you call upon Mr. Gilbert directly? A. Oh, I would say once when I opened the conference, a second time when I tried to persuade him that we didn't have to go through the Board, and a third time was before we wound up the conference.

Q. Going back to the date of September 19th, which you have already testified was when you received cards from Mr. Earle Britton? A. Yes, sir.

Q. Is that right? A. That is right.

99 Q. What happened to those cards after they were received by you on the 19th? A. They were in my possession until the time when I finished talking with Mr. Gilbert. I prepared one of these petitions for election, the kind the Board requires, and took it on over to the Labor Board, my office is about a block away, along with the cards, which I filed immediately.

Q. What date was that? A. That was the 24th of September.

Q. The same date of the call? A. Yes, sir; it was a few minutes after the call, I knew from talking to him that he would not do as I requested, so I asked him to prepare a petition as quickly as possible. I also told the Board I would be in this area a couple of weeks and that would make it possible, but I could handle this while I was up here.

Q. Directing your attention once again to the, the 24th of September, when you placed the call; about what time of day was that? A. In the morning fairly early, too.

Q. And this petition you filed and turned the cards over to the Regional office, that was later that morning? A. Yes, that was in the morning, too.

Q. Did you notice whether any acknowledgement of receipt was made by the Board of this date of turning in as far as filing was concerned? A. Well, I guess what
100 you mean is the stamping the Board usually does on them and while I was in there talking with the Board's Agent they gave the cards and petition to his secretary and she went to work; they have got some kind of machine they stamp them with.

Q. I hand you these copies already admitted to evidence, these cards, will you note the stamp on the back and tell us whether the stamp is placed on there? A. Yes, I think that is the one; one of those regular stamping machines.

Q. What hour is indicated on there? A. Well, that shows a little after 11:15, around 11:15 I would judge, from the way the arrow points on September 24th.

Mr. Marshall: I would like to call to the attention of the Examiner at this time of the stamping of the cards and other papers by the Board, which is a usual office procedure upon receipt of material, and the stamp on September 24th 1948 in this case, is the stamp that is done as the usual process of the Board.

Trial Examiner Downing: May I see the exhibit, please?

Mr. Marshall: That is all. I have a couple more questions, I'm sorry.

Q. (By Mr. Marshall) In connection with this organizing campaign of which you were apprized by Dorsey Mosley, did you at any time participate? A. I came to Harts-
101 ville on the Sunday preceeding the date of the election, I believe the election was on the 19th, I think that was Tuesday, that would make it the 17th. We had a meeting at the schoolhouse. I came over here with Gordon

Finch, and arranged the meeting. We had quite a bit of a crowd, a good-sized crowd.

Q. Who is Gordon Finch? A. He is an International Representative, of the United Textile Workers of America, A. F. of L. The reason I remember the meeting so well because after and during the course of the meeting I got one of the men to check the number of people who were there, particularly the number who were out at the plant working and I had him check for I did not know which ones worked and which didn't. He reported to me between thirty-five and forty who actually worked at the plant, and at the meeting I commented that the election was won if just the people who were there and who worked at the plant would vote for us. As to the details of the meeting it was just the usual Union meeting. I think Mr. Moseley talked, also Mr. Finch and I made what was probably the principal talk as to what a Union could do in a plant and the purposes. No promises were made. I had no idea what we could and could not do and we are a little shy about making promises until we are sure we can produce.

The next I had to do with it I came in the day of the election just about the time the polls were to close. I was

present at the counting, along with the observer, the
102 International Representative and I remember that

Mr. Fox was there also. I there received information from Mrs. Watson, who was a checker there, concerning certain activities that transpired during the course of the day that I felt was improper. I also got some information as to charges made and the basis for those, and before we left I remember stating to more or less to everybody there as well as to Father Shean, the Board Agent, that the election did not end the matter, that we felt it was improper and we were going to move to set it aside and take such other action as we felt proper.

Q. Did you subsequently file objections to the election?

A. Yes, I filed objections to the election, and I also filed, I believe this charge. I forgot one other incident I par-

anticipated in on the 30th day of September, when Mr. Fox, representing the Company, and myself, and Mr. Southerland, and Mark Patterson, Board Agent, met at the offices of the Company to work out details of a consent election if possible. That was the first time I had met Mr. Fox or Mr. Southerland and we there talked about the consent election. Mr. Patterson more or less directed the conversation because he was the Board Agent, and I again at that instance suggested to Mr. Fox that it would be agreeable with us instead of holding an election to have a cross-check of cards and he politely declined to do it, said there was a question of going into an election and there was a question, as I
 103 remember it there, I had raised the question of Interstate Commerce and he wanted to check and give a written opinion, and because of that we did not at that time enter an agreement. He wanted to check that. We later did reach a consent agreement, I believe we set a time and agreed upon a date ourselves, places that might be used and so forth, if that understanding was reached.

Q. What, if anything, happened ultimately when this condition was presented? A. Well, after the election was held, we filed an objection to set it aside and later withdrew the petition pending.

Mr. Marshall: No more questions.

Examiner Downing: You may cross examine.

Cross Examination

Q. (By Mr. Kenney) Mr. Jacobs, referring to your conversation with Mr. Gilbert on September 24, 1949, I ask you if that was your first communication with him? A. Yes, sir.

Q. Have you ever dealt with him previously? A. No, sir.

Q. You were not acquainted with him at all? A. No, sir; I think the,—I believe the first time I saw him was here yesterday. I don't remember that I have ever seen him before then.

Q. You people were not acquainted at all? A. No, sir; not at all.

104 Q. Did you send to Mr. Gilbert a letter concerning your long distance telephone call? A. No, sir; I am not in the habit of doing that.

Q. How long did you talk on the phone that day? A. Well, I would say that, hazarding a guess, because I did not time it, but probably three or four minutes, something like that. Neither one of us talk particularly fast.

Q. It was a rather drawn-out conversation, longer than most long-distance conversations, wasn't it? A. No, not mine. Now I don't know about other people, but it was not long and drawn-out as to me.

Q. But you would say you talked three or four minutes? A. Something like that, and that was just guessing.

Q. You said you called early in the morning? A. During the morning. It depends on what you call "early."

Q. I was going to ask you that; you said "early" in the morning. A. Well you see I usually get in the office around eight and it was between nine and ten-thirty, something like that, it might have been between nine and ten-fortyfive.

Q. You prepared the petition? A. Yes.

Q. After the telephone conversation? A. That is right. You know it is just a form you fill out about four places and it is prepared.

105 Q. You testified concerning Dorsey Mosley and Earl Britton in your testimony here today? A. Yes, sir.

Q. Who is Earl Britton? A. He is State President of South Carolina Federation of Labor.

Q. What is the division of responsibility between Mr. Britton and you for organizing in this area? A. Well actually there is no division at all. Mr. Britton as President of the State Federation, I think probably is a member of the A. F. of L. organizing staff and was trying to pinch hit for Mr. Mosley here, as I remember it, when Dorsey Mosley called me he was tied up and could not get here and

suggested that Mr. Britton might pinch-hit, so he did. When I talked with Mr. Britton on Sunday he reported to me what he had done and he told me about the people and that he thought they would be returning to work, and I remember at that time saying something to him about whether he had made a demand and he apparently had not made it in the form I wanted, so I asked him if he would do it. He then sent me a copy of a demand he had sent Mr. Gilbert and it got to me on the evening of the 23rd and it was mailed special, and I think that was the reason I actually called Mr. Gilbert because when I read it I saw that it was not a demand in terms that the Board required.

Q. Mr. Jacobs, you have referred to a conversation
106 with Mr. Britton on Sunday before the employees returned to work? A. That is right.

Q. September 19th was it not? A. That is right.

Q. It was not in the form you wanted it? A. No, sir.

Q. And you were referring to a demand that Mr. Britton made? A. That's right; and it was not in the form that the Board would recognize, the one he made on the Company for recognition.

Q. What? A. For recognition as a bargaining agent for a particular unit and based on that I suggested to him that he make a formal demand. Well, he did, by means of a letter that he sent to Mr. Gilbert on the 23rd and I received that letter on the 23rd at 10 p.m. I was at my office working when the letter came. That demand was still not to my liking and thereafter on the 24th was when I called Mr. Gilbert and I have a habit of making notations of long distance calls and putting in my files and that was when I made my call on the 24th.

Q. Mr. Jacobs you stated something concerning a conversation with Mr. Fox and Mr. Southerland and Mr. Patterson on September 30th in the office of the Joy Silk Mill.

A. That is correct.

107 Q. Did you say Mr. Patterson was in charge or not? A. That is right, Field Examiner for the NLRB.

Q. Then he conducted the conference? A. That is correct.

Q. Did Mr. Patterson ever communicate with you in respect to this conference; did he ever send you a report?

A. I think that I got a letter from him which was a statement of his recollection of the conference,—

Q. (By Mr. Kenney) I would like for the record to show that the witness is refreshing his recollection.

A. (Continuing) Yes, a letter of October 1, 1948 sent by Mark Patterson to me.

Q. Mr. Jacobs, I call your attention to page two of this letter. Will you please read for the record the first paragraph?

Mr. Talent: Objection. This is evidently a recorded memorandum of something that took place. I think the witness should be asked first whether he remembers it.

Mr. Kenney: Mr. Examiner, the witness just testified that—

Trial Examiner Downing: He testified to a portion of it, I do not understand that he testified as to everything about it. If you wish to pursue it you could ask about the part he has not testified to and ask him to refresh his memory from the letter.

108 Q. (By Mr. Kenney) I am referring to the part of the letter about the conference you testified to. A. I did not read that part. I don't know.

Trial Examiner Downing: I think it is alright for the witness to refresh his memory, but I think it is improper to ask him to read the whole thing there.

The Witness: I don't remember all of this.

Q. (By Mr. Kenney) All right, Mr. Jacobs, you testified concerning that part of the conference having to do with an offer on your part to conduct a cross check on the cards which you had in your possession? A. Yes, sir.

Q. Against some official document of the Joy Silk Mills? A. Yes, sir.

Q. You further testified that you suggested to Mr. Fox that you have a cross check for the purpose of finding out whether or not the cards were authentic? A. That is correct.

Q. And in the same conversation with Mr. Fox, you asked him to bargain? A. Yes, sir.

Q. Is that correct? A. That is right.

Q. Is that your recollection, or extent of your recollection of that particular segment of that conference?
109 A. You mean as to cross checking?

Q. Yes, sir. A. Well, our conversation, I think, probably had two or three phases on cross checks. I think, if I remember correctly, I offered to have a cross check made and I believe Mr. Fox declined. I believe I even suggested we would trust Mr. Patterson as a Board Agent to cross check, and I believe Mr. Patterson said it was no part of Board procedure to check and the Board could not, or he as an agent could not. I believe we got into a question there that Mr. Gilbert claimed the cards were not authentic, not genuine, and I suggested that we could use an impartial person to cross check if the Board would not do it. Mr. Fox's answer was that that would not be satisfactory. I believe we then got into, well, this is not exactly on the cross-check, this is on the question, I remember, of whether or not the Cards were actually signed by the people who were actually on the pay roll and I believe it had not been checked against any pay roll record of the Company by the Board at that time, and I don't believe it was done at that time, no, it was done at that time, I believe by Mr. Patterson. Mr. Fox, Mr. Southerland were making some phone call there to see if they could arrange transportation and I think it was then that Mr. Patterson checked the pay roll list, if I am not mistaken to see if the cards were actually signed by the names of the people who appeared. I do
110 not believe he checked against the signatures.

Q. Mr. Jacobs, did you make any demand to bargain? A. Yes, I think I did. I asked Mr. Fox, I think, al-

most the last thing I said when we left, of course we could obviate all of this if we could sit down and get a contract.

* * * * *

Q. (By Mr. Kenney) Was that the extent of any demands made at that conference? A. At that particular time?

Q. Yes. A. Well, lets see. I wonder if you mind if I look at my notes? I had some notes there too, and I don't remember off hand.

* * * * *

111 A. As far as I remember the only demand I made at that time was the one I mentioned.

Q. (By Mr. Kenney) Is there anything in your notes that concerns making a demand on the Company? A. No, sir. Primarily the things I see here are details talked about, the terms and matters concerning the election only. There is one three-word phrase that may indicate a demand and I wouldn't testify to that, because I am not sure. I have got a three-word phrase which says "if can settle." That means settle by contract or by company recognition, but that does not bring to mind on this occasion any other demand. It does not refresh my memory to that extent.

Q. Mr. Jacobs, referring again to the conference of September 30, 1948, isn't it a fact that you came to arrange the details of a consent election, to work out all matters concerning such consent election? A. I would say that was the primary purpose of my coming, but I would also say if we could have been recognized at that time, it would not have been necessary for us to have done it.

Q. What arrangements were made at that conference relative to the election? Were they carried out or was there a postponement? A. I believe the details that were worked

112 out at that conference were carried out. I might add this, I don't know the purpose of these questions, but I have not tried to intimate it wasn't at all friendly and that any parties acted in bad faith. I did not intend to intimate that at all. As a matter of fact, I think

we got Mr. Fox back to Columbia in order to make some transportation connection he had, because of transportation difficulties.

Q. Mr. Jacobs, one more question. You have the letter from Mr. Patterson dated October 1st, 1948? A. Yes.

Q. You are familiar with it? A. I would not say that I am familiar with it, I just know that we got it, and I read it at the time.

Q. Would you read it now, because I want to question you.

* * * * *

113 Q. (By Mr. Kenny) Was that an accurate account of what took place? A. Yes, it is pretty accurate, however I don't know that it covers every detail. Actually that is impossible, as I remember it I was writing on the yellow sheet as it took place.

Q. It is substantially correct? A. Substantially; yes, sir.

Q. That's right. A. Yes.

Mr. Kenny: I believe that is all.

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125 **Bessie Chapman**, a witness called by and on behalf of the General Counsel, being duly sworn, was examined and testified as follows:

* * * * *

126 Q. Did you have occasion to see Mr. Gilbert about a Mr. Zimm Byrd during 1948? A. Yes, sir.

Q. When was that? A. On September 15th, I think it was, on Wednesday, September 15th.

Q. Were you alone or in company of other people? A. Employees of the first shift.

Q. Tell us what happened at that time? A. We went in and asked if we could talk to Mr. S. C. Gilbert and told Cy, and went back through his office—the whole first shift—maybe I think Ruth S. Segar and Mrs. Kelly didn't go in.

127 Q. Who did? A. All the rest of the employees on the first shift, and we went and asked—he had told us that day he wasn't going to be with us any more.

Q. Who? A. Zimm; so we asked Mr. Gilbert could we get him back. They had promised him a leave of absence to see if he could find something to better himself, but at last he told us, he definitely did tell us, that day we could have Zimm Byrd back, as we were coming out of his office.

Q. What did you do after that? A. Went home.

Q. What then? A. Well, that night I was going to the ball game and as I was coming back by, some of the girls stopped me and asked if I wanted to sign a Union card. I said "yes."

Q. Did you see Zimm Byrd anytime during that day? A. Not after we left the mill; no, sir.

Q. Did you see Mr. Gilbert any time after that about Zimm Byrd, or anything? A. The next morning we did not go to work, we stayed outside of the plant I guess around 9:30 or 10 o'clock and Mr. Gilbert came outside the office and called me by name and told four or five of us girls to come into his office that he wanted to talk to us.

128 Q. Did you go? A. Yes, sir.

Q. How many of you went in? A. Helen, that's Mrs. Watson, Mrs. Morris, Emma Gray Gainey, Geneva Neel, and Jean Longrie and myself.

Trial Examiner Downing: What is the day that was on? A. September 16th.

Q. (By Mr. Talent) What happened in Mr. Gilbert's office? A. Well, we didn't go into his office, we went in the front entrance of the mill, we did not go back to his office that morning. We were standing there and got to talking and every time anybody had anything to say except me, Mr. Southerland stopped them and told them to wait, but we kept on talking and asked him about a paid vacation and he said at that time they could not afford it.

Q. Who said that? A. Mr. S. C. Gilbert.

Q. Was anyone there besides you girls? A. Mr. Southerland and Mr. Gilbert.

Q. And then what happened? A. After we finished talking about that we all started to get up to go out and Mr. Gilbert stopped me, I was sitting in the front entrance to the plant and he and I sat there and talked and discussed some details about the plant and I never talked about the plant, and he said he did not see how they could
 129 afford to give us a vacation with pay, and we then left out the front entrance and went back to his office and sat there and he told me if I would get the girls to come back that day that they would not lose any time, that they would get paid for that day's work, and he would give us a paid vacation and that we could take the Fourth of July, at Christmas or the first of the year, or two or three of us could take a week at a time.

I went back and told the girls that, but after he had promised to send Zimm Byrd back and didn't, the girls did not know whether he would stick to his promise about vacations or not.

Q. Was anything mentioned about the Union at that time?
 A. No, sir.

Q. Did he ask you if you were in the Union at that time?
 A. No, sir.

* * * * *

137 Q. Did you ever have a conversation with Mr. Russell at any time? A. Sir?

Q. You know Mr. Russell? A. Yes, sir.

Q. Did you ever have a conversation with him at any time? A. Yes, sir.

Q. When was that? A. I don't remember the date.

Q. How long before the election; when was it with
 138 reference to the election? A. I think the same day.

We went in and talked with Mr. S. C. Gilbert about Zimm; he walked up to me and said "what's wrong with these girls"? I frankly answered, "I don't know" and then I jumped up and asked him about rotating, he said "you didn't answer my question, you find out for yourself."

Q. How long after the first conversation did you talk with him about rotating? A. It must have been about three or four days, the first shift hadn't been told but the second and third shift had been told.

Q. Were you told any time after that about rotation? A. One day when Mr. S. C. Gilbert read a letter I asked him and that is when he told us; yes, it was not in a letter.

* * * * *

150 Q. (By Mr. Kenney) I refer you to a conversation with Mr. Gilbert after two letters were read to them, to the employees in the Coning Department on the day before the election. A. Yes, sir.

Q. You said you questioned Mr. Gilbert concerning rotation at that time? A. Yes, sir.

Q. Did he promise you that there would be rotation at that time? A. He said it was what the majority wanted.

Q. So he did not promise? A. No, sir; he said what the majority wanted.

Q. Then how was the majority to be determined? A. By voting.

* * * * *

241 **Henry D. O'Neal**, a witness called by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

* * * * *

244 Q. Did you have a conversation with Mr. Russell about the Union sometime then? A. Yes

Q. When was that? A. The day after the meeting at the Grammar School.

* * * * *

245 Q. Tell us what Mr. Russell said? A. He asked what did I think about the Union?

Q. What did you say? A. I told him I didn't know and told him I went to the meeting at the Grammar School. He asked how many were there and I told him, ten or twelve.

Q. Yes, go on. A. He said if I found out anything more to let him know.

* * * * *

333 **S. C. Gilbert**, a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

333 Direct Examination

Q. (By Mr. Fox) State your name and address, please?

A. S. C. Gilbert, Hartsville, South Carolina, 1107 College Ave.

Q. Will you speak as loudly as you can, Mr. Gilbert?

A. I will try to.

Q. I will stand back here and you try to talk so that the Reporter can hear you plainly. A. Yes, sir.

Q. Where are you employed and what is your position?

A. Joy Silk Mills, President.

Q. How long have you been President of the Joy Silk Mills? A. Since the beginning about April 1936.

Q. Were you present at Joy Silk Mills on September 15, 1948? A. Yes.

334 Q. That was the day preceding the walkout by the girls, and the men at the mill? A. Yes.

Q. Do you recall the events which occurred on Wednesday, September 15th? A. Yes.

Q. Will you please state the facts as you recall them?

A. The best I remember, a group of employees came into my office voluntarily and wanted to talk to me. I said all right, I would be glad to listen. They said they understood I fired Zimm Byrd and they wanted me to put him back on the job.

Q. What did you reply to Bessie Chapman and the other girls? A. I said "we have given Mr. Byrd thirty days leave of absence and a month's salary check and at that time he is going to come back and talk to us."

Q. Did Bessie Chapman or any of the girls in the group state who they were speaking for? A. No, sir.

Q. Was any mention made of a Union at this conversation? A. No.

Q. Mr. Gilbert, do you recall any other events or conversations on Wednesday, September 15, 1948? A. Yes.

Q. Will you please state what that was? A. When I returned to the office Mr. Southerland came in.

335 Q. About what time? A. It must have been four thirty or five o'clock. He said that he had talked to Bessie Chapman and asked her if they had been in my office and what was the trouble. She said, Mr. Southerland told me she said that the girls wanted a vacation even without pay.

Q. Were you at the mill on Thursday, September 16, 1948? A. Yes.

Q. That was the day that the employees walked out? A. Yes, sir.

Q. More specifically, that was the day the employees stayed out? A. Yes, sir.

Q. Do you recall what time you arrived at the plant that day? A. I was there about eighty thirty or nine o'clock.

Q. Do you recall events that occurred that day with respect to the walkout or the stay-out as we have termed it? A. Yes.

Q. Will you please explained what happened? A. When I—

Q. (interrupting) Please explain what happened Thursday, September 16, the day on which the employees did not come in. A. When I arrived at the mill a group of employees were outside and I went on in the mill and after a while I sent out and asked Bessie Kelly to bring a
336 group of employees in. Bessie Kelly—

Q. You mean Bessie Kelly Chapman? A. Yes, sir. I told her to bring a group of girls in the mill.

Q. Will you please continue? A. I asked her to bring a group of girls, I would like to talk to them. They came in. Bessie was reporting for the crowd again, for the group.

Q. What did they ask you or what did they say? A. They asked, I asked what the trouble was and they said they wanted Mr. Byrd back on the same job. I told her I thought we had handled that the evening before and that I wouldn't change my decision then she brought up the subject of vacations even without pay. I said the mill was down about half of last year and part of this year and we were hardly in a position to give vacations at this time, but if that was what the girls wanted we would try to do it.

Q. Where did this discussion take place? A. In the reception room in the front office as you enter the mill.

Q. Did Bessie Chapman or any other girls in the group state whom they purported to represent in their discussion with you on that occasion? A. No.

Q. Was there any mention in any respect, either by you or anybody, any member of the group, concerning the
337 Union or Union activities? A. No, sir.

Q. What occurred after this particular discussion closed? A. She went back outside and said she would talk to the girls. After a while two employees came in the mill. I asked if they couldn't get the girls to come in to work and after a while two girls came in the mill and said they were all upset and very nervous and rather wait until in the morning and not come in but they stated that the three o'clock shift girls would come in.

Q. Do you recollect whether or not the three o'clock shift did come in to work? A. Yes, I recollect.

Q. I am referring to Thursday, September 16th? A. Oh, no, they did not come in.

Q. The three o'clock shift did not come to work Thursday? A. Sir?

Q. Did anybody from the three o'clock shift enter the plant or report for work to your recollection? A. The foreman, Wally G. Cassidy.

Q. When we are talking about the three o'clock shift, are we referring to the second shift? A. The second shift.

Q. You recall whether or not anybody reported for work

on the third shift which normally begins at eleven
338 o'clock, that is eleven o'clock P. M.? A. No.

Q. And again referring to Thursday, September 16, 1948? A. Yes, sir.

Q. Mr. Gilbert, were you present in the mill on Friday, September 17, 1948? A. Yes.

Q. Do you recall whether any employees came in to work on that day? A. No.

Q. Were you present in the mill on Saturday, September 18, 1948? A. Yes.

Q. Do you recall whether any incidents pertaining to the employees walkout occurred on that day? A. Yes.

Q. What was the incident? A. I was out of the office for a while. When I came back in about noon, Fred Carpenter, our bookkeeper, told me that Bessie Chapman and Helen Watson had left word the girls would be in to work Monday morning, to tell me they would be in Monday morning.

Q. Mr. Gilbert, I direct your attention to the date of Sunday, September 19th, 1948. Do you recall a conversation with a group of employees on that date? A. Yes.

339 Q. Will you please state the content of that conference, who was present and what was said? A. On Sunday I sent word to Bessie Kelly to come down to the office and bring a representative group of employees, I would like to talk with them, I had received their message Saturday evening before about six o'clock. Bessie and a group of employees came into the office and I told her I would like to talk to her a little bit, I wanted to find out just what was what about returning to work Monday. She said they would return but wanted me to put Mr. Byrd back on the same job as general superintendent and to strip Mr. Southerland and Mr. Raymond Russell of all authority in the mill of employees of any kind and give Mr. Byrd entire charge of the plant. This I refused to do.

Q. Did the girls all have a full opportunity to state their views with respect to whatever subjects they wanted to at that meeting? A. Yes.

Q. About how many girls were present at that meeting?

A. I would say five or six or maybe seven.

Q. Do you recall the names of some or all of them? A. I don't know whether I can or not, I will try. Bessie, Helen Watson, Jean Longrie, Geneva Nelson, Emma Gray Gainey, and I believe Edna Robbins, yes, I don't think I can recall any more.

340 Q. Was anybody there in addition to yourself that represented the company in the course of that discussion? A. Mr. Southerland was present in the office and heard the discussion.

Q. Mr. Southerland also participated in the discussion? A. Yes.

Q. Did you or Mr. Southerland mention the word "Union" in any connection in the course of that conversation? A. No.

Q. Did any of the group representing the employees make any mention whatsoever of the union? A. No.

Q. Mr. Gilbert, I hand you a piece of paper, marked for identification as Respondent's Exhibit No. 4, purporting to be a letter, and ask you if you recognize it? A. Yes, I recognize it.

Q. What is it? A. It is a letter addressed to me, S. C. Gilbert, President of Joy Silk Mills, Hartsville, South Carolina.

Q. What is on the letterhead? A. Charlotte office, A. F. of L., Earl R. Britton, Organizer, 2321 Wilmot Avenue, Columbia, South Carolina, signed by Earl R. Britton, Organizer, American Federation of Labor.

Trial Examiner Downing: Do you mind fixing the date of it?

Q. (By Mr. Fox) The date is September 23, 1948, 341 Columbia, South Carolina? A. Yes, sir.

Q. Mr. Gilbert, I direct your attention to Respondent's Exhibit No. 4 for identification, which is dated September 23, 1948. I ask you whether you received this letter and when? A. On the morning of the following day, the 24th, I received it.

Q. That is Friday, the 24th? A. Friday, the 24th.

Q. Do you recall whether this letter came in the ordinary course of mail or by special delivery or registered mail or how did it come? A. I believe registered and signed for.

Mr. Fox: I offer Respondent's Exhibit No. 4 for identification into evidence as Respondent's Exhibit No. 4.

Trial Examiner Downing: Any objections?

There seem to be none. It will be received.

(Whereupon document heretofore referred to as Respondent's Exhibit No. 4 for identification was received in evidence.)

Q. (By Mr. Fox) Mr. Gilbert, I hand you Respondent's Exhibit No. 4 and ask you to read it.

Mr. Jacobs: Now, Mr. Examiner, we would like to object. The letter is in evidence and speaks for itself.

Trial Examiner Downing: As I understand the question, he hasn't been asked to read it in the record.

342 Mr. Jacobs: Excuse me.

Q. (By Mr. Fox) Just read it to yourself. Mr. Gilbert, I again direct your attention to the date of Friday, September 24th, 1948. That was the day on which you received the letter marked Respondent's Exhibit 4, was it not? A. Yes.

Q. Do you recall any other events which occurred on that day? A. Yes.

Q. Will you please state what they were? A. I received two calls from Atlanta.

Q. Let's ask questions about those calls separately. What time was the first call? A. I would say about ten o'clock.

Q. From whom was that telephone call? A. From a party in Atlanta who told me that he was Joseph Jacobs representing the United Textile Workers of America, A. F. of L.

Q. Had you ever met Mr. Jacobs before? A. No.

Q. Have you ever heard of Mr. Jacobs before? Had you heard of him before that time? A. No.

Q. What did Mr. Jacobs say and what did you say in the course of that conversation as far as you recollect? A.

Mr. Jacobs told me that he was representing United
343 Textile Workers and would petition the Board for the election, stating he had enough employees to petition the Board and asked me if I would agree to a consent election. I told him I had rather not reach a decision at that time until I got in contact with my attorney.

Q. Were you in your office when you received that call or some other location? A. No, it was transferred, I received it on another telephone not in my office at the Silk Mills.

Q. Mr. Gilbert, who in your organization customarily deals with labor relations problems? A. Mr. Southerland and myself.

Q. In that telephone conversation with Mr. Jacobs, did he or did he not request a conference with you for the purpose of bargaining with respect to wages, hours, and working conditions of the employees? A. No.

Q. Did Mr. Jacobs actually request or demand anything relating to wages, hours or working conditions of the employees in your mill? A. No.

Q. Has Mr. Jacobs at any time ever requested you to bargain with him? A. No.

Q. Has any employee or representative of the
344 Union ever asked you to bargain with him or them in behalf of the Union concerning wages, hours or working conditions of the employees in your mill? A. No.

Q. Mr. Gilbert, I again direct your attention to Respondent's Exhibit No. 4 which is a letter from Earl Britton, dated September 23, 1948. Did you reply to that letter? A. No.

Q. Why did you not sent a reply? A. Well, after my conversation with Mr. Jacobs, I didn't think it was necessary to reply to the letter, after I talked with Mr. Jacobs.

Q. Will you state what you understand the content of that letter to be?

Mr. Talent: Objection. The letter will speak for itself.

Mr. Fox: I withdraw the question.

Q. (By Mr. Fox) Mr. Gilbert, did you say anything to Mr. Jacobs about the letter which is Respondent's Exhibit No. 4? A. No.

Q. Mr. Gilbert, you mentioned the fact that you had two telephone conversations on Friday, September 24, 1948. Will you please tell us concerning the second telephone conversation, what time was it, and where did you receive it, and who was calling, and the content of the conversation?

A. I was in the Silk Mill office about five thirty or
345 six o'clock. A party from Atlanta called, identifying himself as Mark Patterson, representative of the Labor Board, stating that the Union had petitioned the Board for an election and he asked me if I were willing to agree to a consent election and I told him, I asked the question if there was some other kind of election and he said yes and told me and I said "well, I don't want to reach a decision and I will not reach a decision now, not until I get in touch with our attorney." He said that was all right.

* * * * *

347 Q. Mr. Gilbert, I hand you a document marked Respondent's Exhibit No. 5 for identification, purporting to be a notice and I hand it to you and ask you if you recognize it? A. Yes, I recognize it.

Q. What is it? A. It is a notice dated October 7, 1948.

Q. Does it have a signature? A. It is signed by S. C. Gilbert.

Q. Was that notice posted in the Mill? A. Yes, sir.

Q. Where? A. Above the clock.

Q. Are you referring to the time clock? A. The
348 time clock.

Q. Is that the customary place? A. Yes.

Q. What is the date on that notice? A. October 7, 1948.

Q. Can you recall how long that notice remained on the bulletin board? A. Yes, until after the election was over, October 19th.

Q. And it was posted October 7th? A. Yes.

Mr. Fox: Mr. Examiner, I offer Respondent's Exhibit No. 5 for identification into the record as Respondent's Exhibit No. 5 in evidence.

Trial Examiner Downing: Any objections by General Counsel?

Mr. Talent: No.

Trial Examiner Downing: Any other objections? There being none, the exhibit will be received.

(The document heretofore marked Respondent's Exhibit No. 5 for identification was received in evidence.)

* * * * *

351 Q. Why did you ask Fred Carpenter to read this statement?

Mr. Talent: Objection. It is immaterial as to why he asked him, it seems to me.

Trial Examiner Downing: I will overrule the objection. I would like to know myself.

Mr. Talent: All right, but it doesn't seem to me to be relevant.

Trial Examiner Downing: I will overrule the objection.

A. It's a little noisy where the letter was read, and then on reading a letter of that kind or any kind I stammer, I don't read so well and I just asked Fred to read it for me.

Trial Examiner Downing: On all shifts?

The Witness: Yes.

Trial Examiner Downing: Was he present at the mill on all shifts?

The Witness: Yes.

Trial Examiner Downing: He worked twenty four hours a day?

The Witness: No, I asked him to come down and read the letter for me.

* * * * *

357 Q. (By Mr. Fox) Mr. Gilbert, did you issue any instructions at any time to supervisory employees in the plant with respect to actions and conduct and statements with reference to union activities in the mill? A. Yes.

Q. What were those instructions? A. Not to question employees about the union or union activities, not to threaten, not to promise, not to spy on them in any manner, not to have anything to say about their activities in
358 the mill.

Q. Do you recall when you issued such instructions, or what the occasion was? A. Yes, on Friday, September 24, after I had talked with my attorney.

Q. Will you please state the particular supervisors to whom you issued such instructions? A. Mr. Russell, —

Q. And who is Mr. Russell? A. I beg your pardon?

Q. He is the plant superintendent? A. Yes, sir. Mr. Cassidy, second shift foreman, and Elsie Clyde McCaskill, third shift foreman.

Q. Was Mr. H. B. Southerland aware of these? A. Yes, he was aware of them also.

Mr. Fox: I'm sorry. For the record, Mr. Southerland is general manager.

Q. (By Mr. Fox) Do you have any other supervisors than those you have named that work in your mill in September, October and November and December 1948? A. Will you ask that question again, please?

Q. I will rephrase it. Were there other supervisors working in the mill other than those you issued instructions to? A. No.

* * * * *

373 Q. Now I call your attention, Mr. Witness, to your conversation on the 24th with Mr. Jacobs to which you testified. What was the first things Mr. Jacobs said on the phone when you spoke to him? A. I think he identified himself.

Q. And who did he identify himself as? A. As a representative of United Textile Workers.

Q. What did he say as you remember, what did he say? A. He said I think he said he was Joseph Jacobs and he represented United Textile Workers.

Q. Is that all he said, I mean about identifying himself? Is that all he said? A. Yes.

Q. Did he say anything about the A. F. of L.? A. 374 Well, I can't recall.

Q. Did he say anything about being Southern director? A. I don't recall it.

Q. Well, what did he say immediately after that? A. It's the same as my testimony there, I will try to repeat it.

Q. If you don't mind, sir. A. All right. After he told me who he was, he told me he had enough employees of the Joy Silk Mills signed to petition the Board for an election and asked me if I would agree to a consent election.

Q. Did he say anything else? A. Yes, he said that was—of course I told him I wasn't familiar with those elections and I believe he said it was most desirable, a consent election.

Q. Did he tell you he represented a majority of the employees? A. I don't know that I recall that.

Q. Did he say he represented thirty persons of the employees? A. He did not.

Q. Did you say anything to him about the letter you received from Mr. Britton? A. I don't recall saying anything to him about it.

Q. You can't recall, you didn't call his attention to the fact that you had already had a letter that said the 375 same thing, did you? A. No, I didn't, I don't think so.

Q. Did you ask him whether he and Mr. Britton were associated in any way? A. I did not.

Q. Do I understand that you told him that you didn't know anything about the way these matters were handled

on the phone? A. Will you repeat that question please?

Q. I said, did I understand that you told him you didn't know anything about how these matters were handled?

A. You mean when?

Q. In that telephone conversation with Mr. Jacobs. A. I believe I did tell him I didn't understand about consent elections, that I wasn't familiar with it.

Q. Were you out at the plant in 1946 when there was an election? A. Yes.

Q. Was that conducted under the auspices of the National Labor Relations Board? A. Yes.

Q. And at that time, did you have occasion to find out about how these things worked? A. Yes, I guess I did.

Q. And didn't you tell Mr. Jacobs over the phone at that time that you had had an election at one time and thought the matter was settled? A. I don't re-
376 call it.

Q. Did Mr. Jacobs ask you if you were president of Joy Silk Mills? A. He may have.

Q. Do you remember whether anything in that conversation was with reference to maintenance and production employees? A. I do not recall it.

Q. Have you ever heard of the words "cross check?" A. Yes, I guess I have.

Q. And didn't Mr. Jacobs in that telephone conversation mention something about a cross check? A. Not to my best knowledge, no, sir.

Q. Mr. Gilbert, were you under the impression that the election in 1946 had settled the issue with reference to representation of your employees? A. Will you ask me that again?

Q. I say, did you understand the election in 1946, the bargaining by the Union in behalf of your employees, did you understand that that election had settled the issue? A. That issue?

Q. Yes. A. Yes.

Trial Examiner Downing: For then or for all time?

The Witness: I would say for then, not for all time, I don't think for all time.

377 Q. (by Mr. Talent) Did you say anything to Mr. Jacobs over the phone about the election having settled the issue at the plant for that time? A. I don't recall.

Q. Was anything mentioned in that conversation about the number of employees out at Joy Silk Mills? A. Not that I recall.

Q. How did the conversation wind up? A. What was the end of the conversation?

Q. Yes. A. I can't recall that.

Q. Do you remember saying anything about the "National Labor Relations Board" or "the Board" in that conversation? A. No, I don't recall that.

Q. Mr. Gilbert, I refer to Respondent's Exhibit No. 5 which is a notice which you testified was posted on the bulletin board. Have you any independent recollection to when that notice was posted? A. Will you let me see it? I am not sure.

Q. You mean you have no independent recollection? A. I am not sure.

Q. That is the notice that was first posted on the bulletin board, do you have any independent recollection as to when that was first posted? A. The 7th of October.

378 Q. And do you have any independent recollection as to when the first speech was given? A. The 12th.

Q. And the second speech? A. The 18th.

Q. And the third speech? A. I don't understand that question.

Mr. Fox: The direct testimony showed that there was a variation in the manner between which the last two statements were read. The testimony shows that the second and third statements were read at different times to the first shift and as a single statement to the second and third shift.

Mr. Talent: I think the witness is confused by my question. I will rephrase it if necessary if Counsel desires.

Trial Examiner Downing: In the first place, I am not sure it's correct to refer to them as speeches.

Mr. Fox: They have not been introduced into evidence, but identified as exhibits.

Mr. Talent: They were statements that were read.

Trial Examiner Downing: In your question you referred to speeches. Apparently he is confused by the question.

Mr. Talent: I will rephrase the question.

Q. (by Mr. Talent) Do you remember when the third statement was read to the first shift? A. To the best of my knowledge, I think, in the afternoon sometime.

379 Q. Do you remember what time? A. Between twelve and three o'clock.

Q. Somewhere in there? A. Yes.

Q. And do you remember when the third statement which has been identified was read to the second shift? A. I would say sometime after three o'clock.

Q. Well, do you remember when. The second shift works from three to eleven? A. That's right.

Q. Do you remember when on the second shift it was read? A. I would say three or four o'clock.

Q. And on the third shift? A. I would say after eleven.

Q. Can you state more definitely when after eleven? A. Well, I would say between eleven and twelve.

Q. Now I ask you with reference to the second statement that was read, when was that read to the first shift? That has been here identified. A. Will you ask the question again?

Q. When the second statement that has been identified was read to the first shift? I will rephrase that again. A. I am trying to get it clear.

Q. I meant, when was the second statement here
380 identified read to employees on the first shift? A. I would say sometime in the afternoon, about one o'clock in the afternoon.

Q. About one o'clock, and can you tell us when the second statement here identified was read to employees on the second shift? A. I would say between three and four o'clock.

Q. And the third shift? A. I would say after eleven.

Q. Can you be a little specific, sir? A. I would say about twelve o'clock.

Q. Now I understand you to testify that when these statements were read, you asked Fred Carpenter to read them. A. That is right.

Q. And did you hand him the copy to read? A. Yes.

Q. You didn't keep a copy for yourself at that time, did you? A. No.

Q. So you didn't follow the speech as he read it? A. I listened to every word he said.

Q. But you didn't have a copy of it in front of you? A. I did not.

Q. I believe you stated that you informed the employees they could ask questions before Fred read the state-
381 ments, is that correct? A. Before?

Q. When you introduced Fred and asked Fred to read, you spoke to the employees beforehand? A. Yes, I think I told them before, it might have been after.

Q. Did any employees ask questions after the first statement was read on any shift? A. To the best of my knowledge, some questions were asked.

Q. On which shift? A. I believe it was on the first shift, I think all of the shifts asked some questions.

Q. Now, during the question period after the first statement was read, were there any questions about rotating after the first statement was read? A. Yes, I think there was a question about rotating.

Q. And do you remember which shift that was on, sir? A. Well, I do not, I believe on all the shifts.

Q. On all after the first statement was read? A. No, I wouldn't say after the first, but I was asked many questions about that.

Q. I am referring you to the time when the statement was read. Were you asked any questions after the first statement was read by any shift about rotating? A. I can recall that I was asked a question but I can't say whether it was immediately after.

Q. Do you remember whether you were asked after 382 the second statement was read? A. No.

Q. After the third statement was read? A. No.

Q. Now where was Fred when he read these statements, standing behind the counter of the shipping department? A. Just behind the counter.

Q. And you were behind the counter? A. Yes.

Q. Mr. Southerland was behind the counter? A. I believe he was.

Q. And Mr. Russell on the first shift? A. I don't recall that Mr. Russell was behind the counter.

Q. Do you remember where he was at the time? A. No, I don't know.

Q. On the second shift, the same thing happened? A. Yes.

Q. Where was Mr. Cassidy at the time, behind the counter too? A. I don't recall.

* * * * *

383 Q. (by Mr. Kenney) Mr. Gilbert, I show you a document which is Respondent's Exhibit No. 4 and ask you if you recognize it? A. Yes.

Q. What is it, sir? It is a letter addressed to me as president of Joy Silk Mills, S. C. Gilbert, signed by Earl Britton, organizer, American Federation of Labor, 2321 Wilmot Avenue, Columbia, South Carolina, dated September 23, 1948.

Q. Do you remember when you received that?

Trial Examiner Downing: Isn't this strictly repetition?

Mr. Kenney: This is something to do with something that was brought out by implication before he talked

on the telephone. I would like to clear up the record on that sir.

Q. (by Mr. Kenney) Do you remember the question Mr. Gilbert? I asked you when you received that letter. A. On the 24th.

Q. September 24th? A. Yes.

Q. Was it before or after your telephone conversation with Mr. Jacobs? A. I received the telephone conversation with Mr. Jacobs in another office as I told you, as I stated in my—

Trial Examiner Downing: The question, Mr. Gilbert, was whether you got the letter or the telephone call first?

The Witness: I got the phone call first.

384 Q. (by Mr. Kenney) Where was the letter received? A. Joy Silk Mills.

Q. At the main office? A. Yes.

Q. Was it opened? A. Yes, sir.

Q. What time was it when you saw it? A. It must have been about eleven thirty or something like that.

Trial Examiner Downing: I may have it wrong, my impression from the testimony on direct, I thought you made some reference to getting the letter about eight thirty. Did I misunderstand you?

The Witness: Yes, sir.

Trial Examiner Downing: The record will show what he testified before. I may have been mistaken.

Q. (by Mr. Kenney) Mr. Gilbert, in what office did you receive the telephone call? A. 355.

Q. And what is that office? A. Carolina Refractory Company.

Q. And that is not the same office as the office of the Joy Silk Mills? A. No, sir.

385 Q. Counsel for the Board asked you about a 1946 election, Mr. Gilbert. Do you recall whether or not that was a consent election? A. I don't think it was.

Q. Did you retain counsel at that time? A. Yes.

Q. Did he handle all these matters for you? A. Yes, all of them.

Q. In relation to your telephone call with Mr. Jacobs, when did you first hear of the term "cross check?" When was the first time you heard that used, was it before or after Mr. Jacobs telephone call? A. I believe it was after Mr. Jacobs telephone call.

Q. On what occasion did you hear that term? A. I believe it was at a conference we had, let me see, cross-check, I believe Mr. Fox told me about that.

Q. Do you remember when? A. It was after the conference, in my office Between Mr. Fox and Mr. Southerland and I believe Mr. Patterson.

* * * * *

386 Q. (by Mr. Talent) Mr. Gilbert, on the morning of the 24th of September, your office knew where you were, didn't they, that is the people in the office knew you were over at the refractory, didn't they? A. Yes.

Q. And if they had anything to communicate to you they could call you, couldn't they? A. They call me over
386 the phone, in other words it couldn't be used at the same time.

Q. Now going back to the election in 1946, at that time you heard about cross check, didn't you? A. I don't recall it.

Q. You don't recall it? A. Well, I had labor relations people to handle those things.

Q. Your attorney keeps you informed insofar as progress in matters with which you are concerned, don't they? A. Yes.

* * * * *

392 **H. P. Southerland**, a witness called by and on behalf of the Respondent, having been first duly sworn,
393 was examined and testified as follows:

Direct Examination

Q. (by Mr. Fox.) Will you please state your name and address? A. H. P. Southerland, 1000 Law Street, Hartsville, South Carolina.

Q. Where are you employed and what is your position? A. Joy Silk Mills, general manager.

Q. How long have you been general manager? A. Since its organization.

Q. When was that? A. April 1936.

Q. You are familiar with the operations of the company? A. Yes.

Q. Please state very briefly the nature of the operation so that whoever reads the record will know what the company does. A. Well, we started out with pure silk, Japanese silk, it was a processing plant. In August 1941 all the silk was confiscated and taken away from us and we switched during the war the best we could to rayon, then in 1946 the latter part of 1946 silk came back temporarily and later that went out again, silk and rayon then nylon came into the picture and with the advent of nylon we were out of the picture entirely. We had no facilities for processing it and it necessitated a building program plus almost one hundred percent additional outlay of equipment to get into the nylon field. We started the
394 building program early in 1947 and built completely around the mill, placing orders for the machinery and it began to come in the fall of 1947. During all that time the plant was closed down except for removing machinery and rebuilding machinery and stuff of that nature getting started up again in early 1948 on a more or less experimental basis.

Q. Mr. Southerland, some of the background may be of value but we don't want to spend too much time on it. What, in a few words, is the nature and purpose of the processes at the mill today? A. Well, right now we are processing nylon yarn for the flat knit trade to make

women's underwear. That is the exact process at this time and has been since we started back.

Q. Do you purchase yarn? A. No.

Q. And you operate entirely on a commission basis?

A. Commission basis.

Q. How many employees are presently employed?

Mr. Talent: Objection. The issue, I think, is the period in question, not now.

Mr. Fox: I withdraw the question.

Q. (by Mr. Fox) How many employees were employed at the mill during September and October 1948? A. Well, taking the two months as a whole, I guess the figure would range from forty eight at the beginning of
395 September to probably sixty two or three at the end of October.

Q. How many shifts do you operate in the plant? A. Three.

Q. Were you present at the mill on Wednesday, September 15? A. Yes, sir.

Q. Do you recall any events which occurred on that day? A. Yes.

Q. Will you please state what occurred? A. Well, I was out in the plant somewhere around three o'clock and I was out there until four o'clock before I came into the office and while I was out there some employees, I couldn't for my life say who said "I noticed a group of first shift employees going into the office" so I walked into the office and asked Mr. Carpenter, our bookkeeper, I asked him what the excitement was about and he said "well, I don't know, but there was almost the entire first shift back in Mr. Gilbert's office." Well, with that I had other things to do in the plant and I went back and finished them and coming back out of the door and started to get in my car to leave and Bessie Chapman was driving by in her car and I flagged her down and asked her to pull into the mill yard there and I just said "Bessie" I said, "what is

the excitement about?" and she said "well, the girls are dissatisfied, I tell you the girls are dissatisfied because they don't get vacations even without pay." I said,

well we chatted on a few minutes, I said "well,
396 Bessie, Mr. Gilbert and myself have discussed that for sometime and it looks as though now there might be a possibility it can be achieved at the plant. The plant seems to be coming along and we are building crews up. I would certainly be agreeable to it myself" and a few more remarks passed and she drove off and I went back into the office and went to where Mr. Gilbert was and he and I went into his office and went into a huddle over it and I told him of my conversation with Bessie then he told me what his conversation in the office was about, that was about Zimm Byrd, incidentally.

Q. Were you at the mill on the following day, Thursday, September 16, 1948? A. Yes, I came down about eight thirty.

Q. Do you recall incidents that occurred that day? A. Yes.

Q. Will you please state what they were? Well, when I drove up to the mill and parked, why all the first shift employees and possibly one or two, I would try to recall the exact number, from the second shift were seated out on the grass around in front of the gate or the fence between the mill and the road and I saw them sitting there and some of the boys were lying on the grass and I said "how come you're not in there working?" and they said "we're not going to work" and I said "well, if that's the way it is, that's the way it is" and I went on in the office.

397 Q. Did anything happen after that? A. Yes.

Q. What was it? A. First I went back in the mill attending to some shipments I knew had to go out that day and in addition to my running the plant I sell the services of our entire mill and also service the complaints and I was out there trying to see if anyone in

the plant whereby I could get a shipment out that day. When I went in there was two of the employees in there working and I asked Mr. Russell if that was all that was in and he said "no, there's one upstairs on the twisters" and after making the arrangement I felt necessary to be made to get the yarn out I came back into the office and as I came back in, as I remember, I might be a little off, a little bit on details, but as I came in from the mill the room was full of employees.

Q. What time was that? A. It was nine or nine thirty.

Q. Which room are you referring to? A. The reception room to the office.

Q. Was Mr. Gilbert there? A. Yes, he was there.

Q. What occurred then? A. Well, there was a discussion going on as to the Byrd incident and it was
398 consuming the greater portion of the conversation, and shortly afterwards the vacation problem came up.

Q. Who brought it up, if you know? A. I don't recall who first brought the vacation incident up in that particular conversation, but I do know Mr. Gilbert was discussing it with them, and he and I, or rather he told them he and I discussed it in his office the previous night and he certainly made the girls an offer of a paid vacation or at least, I took it to be, right in that particular conversation.

Q. What happened then? A. Well, after that, after the issue seemed to be settled, why he was trying his best to get the girls to come back to work and asked a group of them to go out and talk to the girls sitting out on the grass and tell them to come on in and asked them to come on to work.

Q. At the conference in the reception room which you have just described, did any of the employees state whether they were speaking for any organizer or any Union? A. No.

Q. Was the word "Union" mentioned at all, at any time in that conversation? A. No.

Q. Did any of the first shift employees return to work after that conference on Thursday, September 16th? A. No.

Q. Were they asked to return to work on the first
399 shift? A. The next morning.

Q. Not on the same day? A. Mr. Gilbert asked them if they couldn't come in and go to work.

Q. Referring again to September 16th, do you recall whether the second shift came in that day? A. Yes.

Q. Did they? A. No one on the second shift except the foreman.

Q. What time did the second shift normally go to work? A. Three o'clock.

Q. If you know, will you state whether anybody came to work on the third shift that Thursday? A. No.

Q. Were you present in the plant Friday, September 17, 1948? A. Yes.

Q. Did the first shift come in on regular schedule? A. No.

Q. Can you explain the incidents that occurred that day, if any? A. This is Friday?

Q. This is Friday after the first day the girls did not work. A. No one worked that day, the plant was just down.

Q. Were there any girls gathered in front of the plant on Friday? A. Yes, they were there off and on,
400 parading around, some having a little fun with a scooter bike and I noticed they had a cardboard sign which I suppose it was eighteen inches or two feet wide and two or two and a half feet long with the words "We Want Zimm Byrd Back, Kick Raymond Out."

Q. Where was the sign? A. Just out in front of the gate, the first attention I had of it right at the end of the shrubbery on the auxiliary light pole.

Q. About how far is that located from the gate? A. I would say sixty feet.

* * * * *

401 Q. I direct your attention now to Sunday, September 19, 1948. Do you recall the conference with a number of employees on that date? A. Yes.

Q. Where did that take place? A. In Mr. Gilbert's office.

Q. About what time? A. To the best of my knowledge, it must have been about six o'clock.

Q. Do you recall who was present at that conversation? A. I can't say that I recall all of the girls, I think that I know practically all of them.

Q. Will you please name them? A. Bessie Chapman, Helen Watson, Grace King, Emma Gray Gainey, Geneva Nelson, there might have been another but I can't recall.

Q. Do you recall what transpired at this meeting? A. Yes, there was a lot of discussion about most everything and history of the mill and the mill's background which consumed the majority or a portion of it but it was there that we made arrangements for them to come back to work. The employees were very insistent at first that Mr. Byrd
402 be brought back and put in complete charge over me and all the other supervisory staff in the mill and made that demand of Mr. Gilbert and he told them he couldn't do that. He did explain or try to explain to them and I certainly, well, I know we put the truth across as to the circumstances under which Mr. Byrd left us.

Q. At this conference, was any mention of the Union made either by Mr. Gilbert or yourself or any one of the employees present? A. No.

Q. Are you familiar with the circumstances under which Zimm Byrd left Joy Silk Mills? A. Oh, yes.

Q. Will you state the circumstances briefly? A. Briefly, when as I said, we were entering a new field, out of the hosiery field and going into the cloth business and we just had more work than all of us could do and wasn't doing a very good job, I don't mind admitting. As a matter of fact we did lose one contract.

Trial Examiner Downing: May I ask that you be as brief as you can?

The Witness: Briefly, he wanted to look around. He thought he could do better somewhere else and he wanted time off. I said "I will do better than that, I will give you a month's leave of absence with pay. You look around, if you find something better that will be fine, if not you come back to see us, we have got work for all of us to do."

403 That is the substance of the whole thing.

Q. (by Mr. Fox): When did the employees return to work? A. Monday.

Q. That was Monday, September 20th? A. Yes.

Q. Did all shifts report in as usual? A. Most satisfactorily. I think they were all there.

Q. Did the work proceed on a normal basis after the return on Monday, September 20th? A. Not normal compared to the smooth operating plant it was. There was a tremendous amount of conversation all over the place.

Q. The girls engaged in a great deal of discussion, did they? A. Yes.

Q. Did you have any discussion with any employees on that day? A. I don't recall any discussion.

Q. Was the subject of shift rotation discussed on that day by you? A. Not on the first shift, but I caught plenty in the afternoon when the second shift came on.

Q. What was the nature of such discussion? A. I just can't recall all of the parties who asked me about it but they had heard about vacations with pay and they told me they were not so much interested in vacations as rotation of shifts so they could get on the daytime a little
404 and have a little entertainment in the evening.

Q. Was this the first occasion that the problem of shift rotation had been brought to you by the employees? A. Oh, no, the subject has been brought up ever since we started working.

Q. When was that A. June.

Q. Of what year? A. 1948. Even before that there was an awful lot of agitation for rotation. I couldn't get anybody to work on the second shift. They wouldn't take a job.

Trial Examiner Downing: The second and third shifts were agitating, wasn't the first shift satisfied?

The Witness: Yes, I guess so.

Q. (by Mr. Fox) Why had the Company not established shift rotation up to that time? A. We didn't have sufficient employees on the other two shifts to accomplish it. We were just approaching it in September.

Q. When did you finally have a sufficient number of employees to put in shift rotation? A. Well, actually we didn't complete it until probably November, we built up to where it was, we thought, economical.

Trial Examiner Downing: Before you leave the subject of rotation, did you have any shift differential for the second and third shifts?

405 The Witness: Not at that time.

Trial Examiner Downing: Did you put in differential later? During the testimony you heard some of the male witnesses refer to a difference in pay, I think five cents an hour difference.

The Witness: Mr. Examiner, I believe we did put that in in January 1948.

Trial Examiner Downing: Did it extend right on through the plant?

The Witness: Yes.

Trial Examiner Downing: Did it apply only to certain jobs?

The Witness: It applied to everybody.

Trial Examiner Downing: That five cents wasn't adequate to keep the employees on the second and third shift satisfied?

The Witness: No, sir.

Trial Examiner Downing: Is the differential still five cents?

The Witness: Yes, sir.

Q. (by Mr. Fox) Do you recall what you said to the employees who brought up the question of shift rotation

during the day immediately following the return to work on Monday, September 20th? A. Those I discussed it with, we told them we certainly would like to establish it, but the only fair way we knew of doing it was to let them ballot among themselves, just those jobs affected would
406 be the only ones to ballot. My fixers, they are permanently daytime, and the janitors.

Q. Did you in effect suggest that there would be a ballot and that the Company would be guided by the majority of these votes with respect to rotation? A. Yes.

Mr. Talent: I think we ought to have what he did say, not what he suggested.

Trial Examiner Downing: I will sustain the objection.

Q. (by Mr. Fox) Did you tell the girls the company would be bound by the majority vote about the question as to whether or not shift rotation should be instituted? A. Yes.

Q. Mr. Southerland, can you state the time that you first became aware that Union activity was taking place among the employees of the mill? A. September 24th.

Q. What occurred on that date? A. Well, I came in, I was in the office when Mr. Gilbert came in and he told me that he had recently, it was up in the morning, I didn't pay any particular attention to what time it was, he had had a call from the Atlanta office of the A. F. of L., United Textile Workers. That was my first knowledge of any Union activity in the plant.

Q. Was there another call on the same day? A.
407 Yes, there was one later in the afternoon.

Q. From whom was that call? A. The National Labor Relations Board, Mr. Mark Patterson.

Q. Did Mr. Gilbert tell you the nature or content of his call with the A. F. of L. representative in the morning? A. He told me that he asked him for a consent election.

Q. Did he tell you anything else concerning that call?

Mr Talent: I object to this line of questioning on the grounds that it is matter of reporting from a superior to an inferior.

Trial Examiner Downing: What is the purpose of the questioning?

Mr. Fox: It is offered for the purpose of establishing the fact that Mr. Gilbert told that he had a call.

Mr. Talent: He has already said that. I don't see why we have to go into the content.

Trial Examiner Downing: The evidence will be received but limited to the purpose offered only.

Mr. Talent: For that purpose I have no objection.

Mr. Fox: If Counsel is willing to stipulate I will be willing to forego the testimony.

Q. (by Mr. Fox) Did Mr. Gilbert tell you concerning the second telephone conversation on Friday, September 24th? A. Yes, he told me about that.

Q. What did he tell you about that conversation?
408 A. He told me that the representative of the Board called him to make arrangements and details for an interview to arrange for an election.

Mr. Talent: Mr. Examiner, I would like to know if this is for the same limited purpose?

Trial Examiner Downing: Is that the purpose?

Mr. Fox: That is the purpose.

Trial Examiner Downing: Same ruling.

Q. (by Mr. Fox) Mr. Southerland, I show you Respondent's Exhibit No. 4 and ask you if you recognize it.
A. Yes.

Q. What is it? A. It is a letter from the office of the A F. of L., Mr. Earl Britton, Organizer, Columbia, South Carolina.

Q. What is the date on that letter? A. September 23rd.

Q. To whom is it addressed? A. Mr. S. C Gilbert.

Q. And whose signature appears at the bottom of this letter?

Trial Examiner Downing: Mr. Fox, is it necessary to go into detail?

Q. (by Mr. Fox) Can you state when that letter was received by Mr. Gilbert? A. On the morning of September 24th.

Q. Were you present at the plant on Thursday, 409 September 30th, 1948? A. Yes.

Q. Do you recall any discussion which occurred on that day? A. Yes. I was there at a conference.

Q. What time was the conference? A. Ten o'clock, around ten.

Q. Who was present? A. Mr. Mark Patterson, the National Labor Relations Board, Mr. Joseph Jacobs—

Q. Who is he? A. United Textile Workers of America, A. F. of L., and Mr. Fox and myself.

Q. Mr. Fox, the company's counsel? A. The Company's counsel.

Q. Will you please state what happened at the conference? A. Well, we, arrangements were largely handled by our Counsel and Mr. Patterson and there was some doubt in our Counsel's mind as to whether we fell within the scope of interstate commerce and it was also some doubt in his mind as to whether the Board had sufficient cards to ask for an election.

Mr. Talent: Mr. Examiner, I am going to interrupt for the moment. The question is characterizing evidence as to whether there was any doubt in the Counsel's mind. I think he should testify as to what happened, what statements were made and so forth,

I don't think he should be going into any doubts 410 in Counsel's mind.

Trial Examiner Downing: I agree with you that characterization would be without fact.

Q. (by Mr. Fox) Mr. Southerland, as far as you are able, try to not characterize statements, rather state what was said, who said it and what was done. A. I'm sorry.

Q. That's quite all right. You're not supposed to be an expert witness. A. There was between our counsel and Mr. Patterson something said that he had the cards but wasn't allowed to show them.

Q. Did anybody ask to see the cards? A. Yes, our attorney, Mr. Fox.

Q. What was the occasion of asking to see the cards? A. To test their genuineness and see if they were genuine and signed. There was some question raised by our attorney as to it.

Q. Did the attorney state that he didn't know whether there were a sufficient number of cards to justify an election? A. Well, I thought I answered that, Mr. Fox, a minute ago, but that is correct.

Q. Did Mr. Patterson have possession of the cards? A. He said he did.

Q. Did he show them to you or to the company's attorney? A. No.

411 Q. Was he asked to show them? A. Yes.

Q. What did he say? When he refused to show them? A: He said it wasn't a practice of the Board.

Q. Did the company agree to a consent election at the conference? A. Tentatively.

Q. Will you please explain? A. Based on counsel's request to look up a point of law pertaining to interstate commerce.

Q. Was the date set for the election? A. Yes.

Q. What was that date? A. October 19th.

Q. About how long did the conference take altogether? A. About an hour.

Q. Did either Mr. Jacobs or Mr. Patterson make any mention concerning a demand made by the Union to bargain with the company? A. (No response).

Q. Do you understand the question? A. I don't know whether I do.

Q. Let me rephrase it. Did Mr. Jacobs say anything at that conference with respect to his having made a demand

upon the Company to bargain with the Union? A. I believe he said that he did.

412 Mr. Fox: I don't know if the witness understands.

Trial Examiner Downing: Did what?

The Witness: Said he had sufficient cards to.

Trial Examiner Downing: To what

The Witness: Ask for an election.

Trial Examiner Downing That wasn't the question.

Mr. Fox: Will the Reporter read the question?

(The Reporter read the question as follows: "Did either Mr. Jacobs or Mr. Patterson make any mention concerning a demand made by the Union to bargain with the Company?")

Q. (by Mr. Fox) —demand as to bargaining with the company concerning wages, hours, and so forth? A. Oh, no, no.

Q. Did Mr. Patterson make reference to any demand made by the Union with reference to wages, hours, working conditions? A. No.

Q. Was any statement or comment made by either Mr. Jacobs or Mr. Patterson concerning the fine cooperation of the Company and Counsel at that meeting? A. Yes, both seemed delighted that everything went off so smoothly. As we broke up, they thanked us for our cooperation.

Q. Has Mr. Jacobs to your knowledge, or any representative of the Union ever made demands upon the company to bargain with the union concerning wages, hours, or working conditions? A. No.

413 Q. Has any employee of the company at any time ever asked the Company to bargain with the Union concerning wages, hours, working conditions? A. No.

* * * * *

415 Q. Mr. Southerland, how long ago was work commenced on the actual physical construction of the canteen? A. Early in 1947.

416 When was the building itself, which is now the

canteen completed? A. The canteen is, the building itself was completed in about June.

Q. June of what? A. 1948.

Q. Was that room originally intended and built specifically to be a canteen? A. Yes, sir.

Q. Did the employees know that room was going to be a canteen? A. Generally, it was certainly talked all over the mill and I assume everyone knew it. We didn't put a bulletin on the board to that effect.

Q. Was it talked about and known by the employees that it was going to be a canteen prior to September 19, 1948? A. Yes.

Q. When was the canteen finally opened and used as a canteen? A. To the best of my recollection, in January.

Q. 1949? A. Yes.

Q. Why was it not opened sooner? A. We couldn't get the equipment. We couldn't get delivery of it.

* * * * *

447 Q. Well, didn't you testify on direct examination that a great deal of discussion was going on at the plant at the time about rotation? A. No, sir, I said rotation had been a problem with us for a long time, not with anybody on the first shift but the second.

Q. Wasn't there a great deal of discussion at that time at the plant about the Union? A. Not to my knowledge, I don't know.

Trial Examiner Downing: You knew that after September 24?

The Witness: Yes, sir—no, sir, I didn't actually know it, I surmised as much, but I didn't know it.

Trial Examiner Downing: Didn't you previously refer to the campaign?

The Witness: That was October 7, until we got notice, that was the period I was speaking of then.

Q. (by Mr. Talent) All right, Mr. Southerland,
448 I believe you testified there had been consideration

of rotation for quite some time, is that correct? A. I didn't get the question.

Q. I believe you testified you and Mr. Gilbert had been considering rotation at the plant for quite some time? A. Well, we had thought of it since we started back to work.

Q. Had you thought of it before you started back to work? A. No, sir, we had bigger problems than that. There wasn't sufficient employees to put it in.

Q. You mean to say you never had sufficient number of employees to put in rotation? A. Not since 1941.

Q. How many employees are there now? A. Sixty four or sixty five.

Q. How many employees did you have in 1946? A. A hundred and seven, I think.

Q. As a matter of fact, you had more employees then than now? A. That is right.

Q. And yet you say at that time you didn't have enough employees to consider rotation? A. We were only running two shifts in 1946.

Q. At that time the people on the second shift were interested in working on the first shift? A. Yes, sir.

Q. When did you introduce shift differential
449 you were talking about? A. I couldn't answer that, I just don't know, but I believe it was sometime after the first of the year of 1948.

Q. What was the method of compensation of employees prior to that time? A. The same rate.

Q. What was that rate? A. I don't recall.

* * * * *

Q. Calling your attention to the canteen, I believe you stated that the physical construction of the canteen began early in 1947? A. The building in general.

450 The whole building? A. Not all around, additions to it, part of the old original building, the second story part.

Q. When was the addition finished? A. Late in 1947 or early in 1948.

Q. The canteen was finished in 1947, wasn't it? A. No, sir that was——

Q. I'm talking about the room in which the canteen is located? A. No, the place was started——

Q. When was it finished? A. I don't remember the exact date, I think we had the plaster in March 1948.

Q. And when was the order for equipment put in? A. I don't recall. Mr. Gilbert handled that and I don't remember the date.

Q. When did you get delivery of the equipment? A. We got part of it in early fall, part in October, I think we got some in October, we didn't get it actually finished up until in December

Q. When was the first time that the people had been advised of the plans for a canteen? A. I don't recall.

Q. Wasn't it after the Union organizational campaign had been started? A. I believe it was before that. When the building started, people generally knew what it was for.

451 Q. And how had these people been informed? A. I couldn't answer that.

Q. Did the Company tell them in any way? A. The Company didn't officially tell them.

Q. Did the Company advise them in any way about rest periods at that time that were about to come to them? A. The first of the rest periods was announced in the statement by Mr. Gilbert.

Q. Those statements that were read to the employees you are talking about? A. Yes, sir.

Trial Examiner Downing: Do you know when the decision was made to give those rest periods?

The Witness: No, sir, I don't. I can't name the date, but we had planned to do that when we had a canteen.

Trial Examiner Downing: Well, from your testimony the canteen was operating, it was finally finished in the summer?

The Witness: That is when the equipment came.

Trial Examiner Downing: How were you announcing rest periods, or why were you announcing rest periods in October since you didn't have the equipment essential to the operation of the canteen?

The Witness: We were supposed to have the equipment we were promised the equipment and got some of the tables and chairs.

452 Q. (by Mr. Talent) You say you got some of the tables and chairs in October? A. Some in October.

Q. Were they in the canteen at the time? A. Yes, sir.

Q. Were they used during the election? A. I believe they were in there at the election.

Q. How many tables and chairs were there? A. I don't recall if we got tables and chairs just before or shortly thereafter but I know they were delivered around about that time.

* * * * *

457 Q. Mr. Southerland, how long has Joy Silk Mills been paying an increased rate of pay to employees on the second and third shift? A. I don't have that record in mind.

Q. I don't think you understand the question? A. I just don't know.

Trial Examiner Downing: May I also point out that the Company records and presumably Mr. Carpenter's testimony will fix it exactly?

Mr. Kenney: No further questions.

* * * * *

556 **K. F. Carpenter**, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

* * * * *

580 Q. (by Mr. Fox) Mr. Carpenter, is there a different rate of base pay given to persons on the second and third shifts, or is there a shift differential?

A. Yes, sir; there is a shift differential for workers on the second and third shifts as compared with those on the first shift.

Q. Do you know how much that is? A. Yes, sir.

Q. How much is it? A. It is five cents per hour.

A. So that in the course of rotation an employee's pay would be different every third week, even though she might have worked the same number of hours? A. That is correct.

Q. The first shift; they do not get that extra five cents an hour? A. Yes, sir.

Q. How long has that been effect at the mill to
581 your knowledge? A. It has been effect certainly after 1941 and before 1946, April of 1946.

Q. Why do you fix the date April of 1946? A. Because I came back from the armed service in April of 1946 and it was in effect.

* * * * *

621 Trial Examiner Downing: I have some I would like to ask Mr. Carpenter.

Q. I would like to ask you this question, Mr. Carpenter?

A. Yes, sir.

Q. You spent all of your working time in the employ of Joy Silk Mills and Premium Knitting Mills? A. Yes, sir.

Q. Approximately how is your time apportioned between your duties for the two companies? A. Sir, if the Premier Knititng Mills is running, I believe that I would spend about forty per cent for it say, and sixty per cent for the Joy Silk Mills. That is shaving it pretty close if they are not running and that would be the case about half of the time.

Q. You say if it is not running, how would your time be apportioned between them in that event? A. Well,
622 the Premier Knitting Mills have not been running for about half of the time, and in that period I probably spend about twenty per cent of my time for

Premier, for there are still some routine duties to perform over there even tho they are not running, and spend the other seventy-five or eighty per cent at Joy Silk Mills work.

Q. Was Premier Knitting Mills running in September and October of last year? A. Very, very little, sir, very little if any. We had a very bad fall.

Q. Is it not a fact, Mr. Carpenter, that your salary is apportioned approximately two-thirds to Premier Knitting Mills and one-third to Joy Silk Mills? A. It is not precisely that, sir, but it is substantially that proportion.

Q. It is approximately that? A. Substantially that; yes, sir.

Q. Then I take it your salary is not apportioned to the amount of time you spend for the duties you perform for the two companies? A. One could draw that conclusion, sir.

Filed Dec 1 1949

IN THE UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 10433

JOY SILK MILLS, INC., a corporation, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

**Stipulation Establishing Certain Facts as Found by Trial
Examiner in His Intermediate Report.**

It is hereby agreed and stipulated by and between the parties hereto, through their attorneys, that the following facts, as found by Trial Examiner George A. Downing, in his Intermediate Report and Recommended Order, filed with Respondent in the administrative proceeding below, are admitted for purposes of review in this Court.

Petitioner is and has been for many years a corporation duly organized under and existing by virtue of the laws of the State of South Carolina, with its principal office and

place of business at Hartsville, where it is now and has been continuously engaged in the business of contracting with respect to the processing of yarn and thread, i.e., the twisting, throwing, and other processing of yarn and thread. In the course and conduct of its business operations for a period commencing January 1, 1948, and ending December 31, 1948, which period is representative of all times material herein, petitioner received raw materials, consisting principally of rayon and silk yarn valued in excess of \$250,000, 100 percent of which value was purchased, delivered, and transported in interstate commerce from and through states other than the State of South Carolina, to its plant at Hartsville. During said period petitioner processed finished products consisting principally of rayon and silk thread valued in excess of \$250,000, 100 percent of which value was sold, shipped, and transported in interstate commerce to and through states other than the State of South Carolina, from its said plant.

Petitioner conceded for the purposes of this proceeding that it is engaged in commerce within the meaning of the Act, and the undersigned finds that it is so engaged.

United Textile Workers of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of petitioner.

Petitioner operated a small but modern plant located at Hartsville, South Carolina. It normally employed from 50 to 60 employees, divided among 3 shifts. The pay roll ending September 18, 1948, contained the names of 52 employees. They were divided approximately as follows: 25 on first shift, 7 a.m. to 3 p.m.; 17 on second shift, 3 p.m. to 11 p.m.; and 10 on the third shift, 11 p.m. to 7 a.m. Its managing officers were S. C. Gilbert, president, and H. P. Southerland, general manager, and its plant superintendent was Raymond Russell. Petitioner concedes that they and Wallie G. Cassidy, foreman, and Elsie Clyde McCaskill, forelady, were supervisors within the meaning of the Act.

Gilbert and Southerland occupied separate offices at the front of the plant building. A third office adjoining theirs

and also adjoining the reception room or office lobby was occupied by K. F. (Fred) Carpenter, petitioner's bookkeeper and sole clerical employee, whose status will later be discussed in detail. The main entrance into the offices and plant opened into the office lobby, adjacent to Carpenter's office, but the employees entered the plant by a separate door which opened into the canteen.

Concerted activities arose spontaneously among the employees on the afternoon of September 15, 1948, as a result of the displacement by petitioner of head foreman, Zim Byrd, whom the employees on the first shift requested Gilbert to reinstate. When Gilbert did not adjust the grievance to their satisfaction, the employees began that evening the formation of a union. They obtained a supply of membership cards from the president of another of the union's locals and set about signing up members outside the plant as the third shift reported for work and as the second shift left.

The next morning the first shift (with possibly three or four exceptions) did not report for work but congregated outside the main entrance and continued the membership campaign. At Gilbert's request the leaders conferred with him in the plant around 9:30 a.m. They renewed their demand for the reinstatement of Byrd and added for the first time a demand for paid vacations. Gilbert agreed to neither, but in a discussion with a single leader (Bessie Chapman) thereafter, he promised that if the employees would immediately come back to work (it was then about noon) he would pay them for a full day's work and grant the request for paid vacations. The employees did not accept the offer, and the walk-out continued through the 16th and 17th (Thursday and Friday). Thirty-seven employees had signed membership cards through the 16th and one more signed on the 17th.

On Saturday, a non-work day, Helen Watson and Bessie Chapman, two of the leaders, sent a message to Gilbert that the employees would report to work on Monday. On Sunday evening the leaders met Gilbert at the plant at his re-

quest to reach an understanding of the basis on which the employees would return to work. The employees' grievances were again fully discussed and Gilbert again promised paid vacations. There was no discussion of recess periods, of rotation of shifts, of wages, or of the union.

Work was resumed on Monday, all shifts reporting as usual.

In the meantime the signed membership cards had been transmitted to the union's State Representative, Earle R. Britton, and by him to its Southern Director, Joseph Jacobs.

In a conference held on September 30, petitioner tentatively agreed to a consent election and all arrangements therefore were made. Its tentative consent was shortly made final and the election proceeded as per plan and without postponement on October 19. The union lost the election 32 votes to 16, 9 additional votes being challenged.

On October 25, the union filed its protests and objections to the conduct of the election which were sustained in certain particulars by the Board's Regional Director, who on January 25, 1949, in his report thereon, ordered the election set aside and directed another election. However, on March 3, 1949, the union, with the approval of the Regional Director, withdrew its representation petition without prejudice.

The evidence is not in conflict that throughout the conferences on September 15, 16, and 19, no reference was made by participants on either side to "union" or "union activities." There is also no evidence that Gilbert on September 19, made any threats or issued any warnings. Nor, even assuming the General Counsel intended to charge Gilbert with promising benefits to refrain from union activities, does the evidence sustain such a charge during the period now under consideration. It shows only that he partially acceded to the demands of his employees (made during their concerted activities) to the extent of agreeing to grant a paid vacation.

On the night of September 15, the leaders in the movement to organize a union had gone to the plant and had begun signing up members as the third shift reported for work and as the second shift left. They operated mainly from Watson's car or Chapman's car parked on or near the parking lot in front of the plant. There is testimony that Elsie Clyde McCaskill (now conceded by petitioner to be a supervisor) passed by and saw them on her way into the plant, but there is no evidence that she learned they were actually organizing a union at the time. A few moments later Carpenter came out of the plant and spoke to the group, inquiring what they were trying to do by keeping the girls from coming into the mill on the third shift and why they didn't go home and leave the second shift alone. There is no evidence that until Carpenter approached and put his inquiry he had any knowledge that the employees were actually engaged in organizational activities.

It is therefore concluded and found that petitioner did not, during the period from September 15 to 30, both inclusive, engage in acts which constituted interference, restraint, and coercion.

It was stipulated by the parties and is hereby found that all of the production and maintenance employees of the petitioner at its plant in Hartsville, South Carolina, except for clerical and office employees and guards, professional employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

It is also found that on September 16, 1948, a majority of petitioner's employees in said unit had designated and selected the union as their representative for the purposes of collective bargaining with the petitioner. I therefore find that on September 16, 1948, the union represented a majority of petitioner's employees in the appropriate unit, and that said majority continued to the time of the election on October 19.

On the morning of September 24, Jacobs called Gilbert on the long distance telephone from Atlanta. Immediately

following the conclusion of the call Jacobs prepared and filed with the Board's Regional Office in Atlanta, a representation petition which alleged among other things that 38 employees of a unit of 45 supported the petition, that the union had notified the employer of its claim that a question concerning representation had arisen, and that the employer had failed to recognize the union. He also filed with the Board the 38 signed membership cards, all of which bore the following legend:

I, the undersigned, an employee of Joy Silk Mills, Inc., hereby accept membership in the United Textile Workers of America, (AFL), and authorize its representatives to bargain for me in all matters pertaining to my wages, working conditions, Union obligations and all other conditions of employment.

Later in the afternoon Paul M. Patterson, Field Examiner of the Board, also called Gilbert and inquired whether he would agree to a consent election. Gilbert again refused, stating that he wished to consult his attorney first.

On September 30, Jacobs participated in a conference in petitioner's office with Patterson, Southerland, and Henry J. Fox, petitioner's attorney, to work out, if possible, arrangements for a consent election. Jacobs suggested to Fox that the union would be willing to agree to a cross-check of membership cards rather than an election. Fox declined the suggestion stating "There was a question of going into an election," and that there was a question in his mind concerning interstate commerce and he wanted to check into it and give a written opinion.

Subsequent to the telephone call of September 24, Gilbert, acting on the advice of counsel, had immediately instructed petitioner's supervisors not to question employees about the union or union activities, not to threaten or promise, not to spy on them in any manner, and not to have anything to say about their activities in the mill. On October 7, he posted a notice informing the employees of the election and of their right to vote freely therein. Those

and the other statements in the notice plainly qualified as free speech.

Down to that time there is no evidence that petitioner was at all concerned about the outcome of the election or that it had endeavored in any manner to interfere with the choice of a bargaining representative by its employees.

On October 12, 1948, the employees were separately assembled on each of the three shifts and read a lengthy written statement prepared by Gilbert. Similarly on October 18, two separate lengthy statements were read on each shift. On the second and third shifts the two statements were read as one. Though Southerland and Russell were present on all the occasions, Gilbert selected Carpenter to read the statements for him.

Carpenter was petitioner's bookkeeper and timekeeper and one-man office force. He had no assistants, and no employees were subject to his supervision and direction. He had no authority to hire or fire or to recommend either. It has been shown that Carpenter occupied one of petitioner's three offices, the other two of which were occupied by Gilbert and Southerland, petitioner's managing officials. Indeed, petitioner termed Carpenter's office its "general office" and kept in it, not only its ordinary books and payroll records, but also its corporate books and records. Carpenter's office was immediately adjacent to the reception room or office lobby into which the general public and all applicants for employment entered.

Under the physical arrangement, Carpenter met all callers at the plant whose business was either with Joy or with Premier Knitting Mills. Thus, the evidence shows that Premier itself occupied under a separate lease the rear portion of the building which housed Joy's offices and plant; that two doors opened from Joy's premises into Premier's; that the general public, including applicants for employment, customarily used Joy's main entrance which opened into its office lobby, and that Premier's employees used the canteen door entrance used by Joy's employees.

Premier's fiscal affairs were also closely interwoven with Joy's, the controlling stock interests being identical, and all except one director being the same. Though owning no stock in Joy, Carpenter owned 25 percent of the capital stock of Premier, Gilbert and Southerland also owning 25 percent each. Carpenter was president of Premier and in fact acted as its sole managing officer, though Gilbert was treasurer and Southerland was vice president. Premier's official corporate books and records were also kept in petitioner's general office and in the same safe which contained petitioner's.

Carpenter also performed in the general office all necessary bookkeeping and clerical work on Premier's books and there met callers who had business with Premier, including applicants for employment. Indeed, only Carpenter had authority to hire and fire for Premier. That his authority so to act was known among petitioner's employees is established by the testimony of Jean Longrie (not denied by Carpenter) that she accompanied her sister to a conference with Carpenter when the sister had applied to him for a job at Premier, and that she knew Carpenter was the one to ask for a job at Premier. Longrie also testified to observing Carpenter make frequent visits into the Premier plant.

Bessie Chapman testified that the morning of the election and before she voted Carpenter approached her and requested her to read a newspaper clipping, and she complied. The testimony of other witnesses, including Carpenter, establishes that the clipping was of the Westbrook Pegler column from the Charlotte Observer of October 19. Carpenter admitted that it was a distinctly unfavorable commentary on union leadership, being definitely complimentary to some high union officials. This provoked her to recite an old grievance against the company to which Carpenter replied, "Why, Bessie, I thought better of you" and then cursed the union. Carpenter also quoted Russell to the effect that she was as good an operator as petitioner

had and told her "you could better yourself down here if you would try." Carpenter concluded the conversation by saying, "I know I can't change your mind, there is no point in me standing here arguing with you," and "I see I can't do anything with you so I will talk with Henry O'Neal."

Carpenter's testimony does not substantially contradict Chapman's account.

Henry D. O'Neal testified that in a conversation which he fixed uncertainly as the day before the election, Carpenter approached him at Chapman's machine and asked him, "You didn't tell me which way you were going to vote, for or against the union?"; that when he didn't reply Carpenter at first turned away but came back and asked "you like your job?"

Jean Longrie testified that the morning of the election Carpenter asked her to read the Pegler clipping previously referred to, that she did so, that it related to the president of the American Federation of Labor, and referred to the fact that he had been in prison or had taken money, that Carpenter then remarked that the union was being run by a bunch of crooks and that if the union came in Mr. Gilbert probably would close down the mill and they would both be out of a job and he needed his.

Carpenter admitted asking Longrie to read the article, telling her it was another angle of the union question which possibly had not been presented.

Edna Robbins testified that the day before the election Carpenter came up to her machine and opened a conversation by stating that he was surprised that she was for the union, that her father (who worked elsewhere) was not a union man and that he didn't think she should be a union girl. She hadn't told Carpenter she was for the union and asked him how he knew. He said that rumors had been going around.

Robert Morris testified that on the day of the election Carpenter came up to him in the plant and asked him how he was going to vote; that he replied that was his business

and he would vote the way he wanted to. After a discussion regarding Morris' feelings towards Southerland and Gilbert, Carpenter told him, "Don't be going around telling people how to vote."

Helen Watson testified that on election day around 11 a.m. (The third shift voted from 7 to 7:30 a.m.; and the second from 2:30 to 3 p.m. and the first from 3 to 3:30 p.m.) Carpenter brought to her machine the Pegler clipping previously referred to. He first stated that he had talked to a good many of the girls and he couldn't seem to do much with them; that he knew it wasn't any use to talk to her but he wanted her to see the clipping. She read it, and after further conversation Carpenter referred to the Byrd incident and stated that if he were in Gilbert's place he would tell some of the employees they could quit if they wanted to. In the same conversation Carpenter told her that "in the office they were surprised to find she was the brains behind the union movement."

On the morning of the election the polls were scheduled to open at 6:45 a.m. and the election was being conducted by Rev. M. V. Shean (referred to throughout as Father Shean) as agent of the Board. Watson had been selected as the union's observer or representative, with Chapman as an alternate, and Carpenter as petitioner's observer or representative. Watson met Moseley, Finch, Chapman, and Father Shean at the plant around 6:10 a.m. and in a few minutes Carpenter arrived and let them in the main entrance into the office lobby and they went on into the canteen. The canteen door (the normal employee entrance) had been locked in order to prevent first shift arrivals from interfering with third shift voting, but Moseley, who was there to inspect the voting premises for the union, had not understood the arrangement. In a few moments some of the first shift arrivals having rattled the door knob, Moseley began inquiring why the door was locked, directing his inquiries to Father Shean. Carpenter heatedly intervened, exclaiming, "Moseley, who are you to tell anyone what to

do? You have no damn right in here," taking off his glasses. Carpenter conceded that his remarks, though not an order, were in effect an invitation to leave the premises. Moseley endeavored to justify his presence and Father Shean intervened and broke up further exchanges.

Moseley and Finch immediately left the plant and went to their cars, but Carpenter followed them outside and renewed his argument. He stated that they should get into a decent profession since they were certainly not in one, that they "hadn't any damn business interfering with the operations of our plant" and that they were "just as red as Joe Stalin." After several minutes argument Carpenter also stated, "before we will see the union come in here we will burn the goddamned plant down and throw the key away and the employees here know that we will do it." Carpenter denied only making the last quoted statement. No employees heard the conversation outside the plant and there is no evidence that it was communicated to any of the employees either before or after the election. Watson and Chapman heard the conversation in the canteen. It is concluded and found that the happenings on the occasions above referred to were substantially as testified to by the witnesses for the General Counsel.

Jean Longrie testified that on the morning of the election Russell asked her why she had suddenly become interested in the union and she told him she had a right to be. After further conversation Russell added as he left her "I hope you are satisfied."

Edna Robbins testified that the day before the election she walked up to her machine where Russell was talking with Ruth Segars, that Russell then spoke to her saying she was on one side of the fence and that he was on the other and then proceeded to relate some of his experiences as a union member saying among other things that the union didn't do him any good and that all he did was pay dues.

Gwendolyn Beasley testified that on October 18, Russell questioned her about the union meeting at the school house

on Sunday, asking how many were there, what the union promised, and whether the union could give the employees anything he couldn't. She told him she didn't go to the meeting and he wanted to know why. She told him she forgot about it and he said, "Well, there must not have been anybody there, every body I have spoken to said that nobody had been." During the same conversation Russell told her that if the union came in it would take away the relationship between the employees and the petitioner, and that the employees would have to correspond with the mill through the union; that he was a union member once and never got anything out of it except paid dues.

William Chapman testified that a day or two before the election Russell asked him if he had made up his mind about the way he was going to vote. Chapman replied that he had, and Russell said he "hoped it was made up the right way." Russell also said that he had been in the union and didn't like it and didn't think it did any good and that "You can't leave the union to become a foreman." Russell added that he "had a raise coming up" for Chapman, but if the union came in it might delay it and he might not get it.

Vonceil (Hendrix) Holloman testified that she had more than one conversation with Russell a few days before the election but was unable to state the exact number. Insofar as pertinent to the issues her testimony as to the conversations may be summarized as follows: Russell told her some of his experiences as a member of a union, said that it wasn't any good and that he wished she was on his side of the fence. He asked her if she went to the union meeting on Sunday night; he told her that if the employees voted for the union the union couldn't make them lose their jobs but that she might lose her shift (i.e. through rotation); that the mill was giving the employees a vacation and the union couldn't say they would give it to them. On cross-examination she admitted that during all the conversations he informed her she could vote as she pleased and she

added "then he told me (the union) didn't do him any good." She denied that she had asked Russell what would happen if the union came in and that she was afraid of losing her shift because of lack of seniority.

Lois Gainey testified that when interviewed on her application for a job in December 1948, Russell told her he was going to need a few girls and would keep her in mind. Then he asked her what she thought of a textile union and she said she didn't know enough about unions to express her mind one way or the other. She was hired shortly thereafter. Russell did not testify to the incident. Petitioner in its brief concedes that Gainey's testimony is accurate.

It is concluded and found that the incidents occurred substantially as testified to by the General Counsel's witnesses.

Counsel for the petitioner, on or about March 10 and 11, 1949, submitted a questionnaire to a substantial number of petitioner's employees employed during the months of September and October, 1948. Counsel prepared the questionnaire in the course of preparation and investigation of the facts alleged in the complaint. Before preparing the questionnaire petitioner's counsel called the Board's Regional Director in Atlanta by telephone and informally requested the Chief Law Officer of the Region for a more definite statement of facts in order to prepare petitioner's defense in the hearing. This request was refused whereupon petitioner's counsel filed a motion for a more definite statement on the same basis and also filed its answer. The motion was referred to the Trial Examiner and was granted in part but the requested information was not furnished petitioner under the Trial Examiner's order until the morning of March 22, 1949, at the start of the hearing.

The questionnaire was submitted to and answered by the employees of the petitioner under the following circumstances:

They were interviewed in the canteen in groups of from four to eight employees on company time. Counsel introduced themselves by name to the employees and advised them that they represented the company as attorneys. They told the employees the purpose of the questionnaire which was to be given them was to enable counsel to prepare the company's defense in the hearing that was to take place on March 22. The employees were advised that the filling out of the questionnaire was completely voluntary and that there would be no reward, no promises, threats, or coercion of any kind connected with the filling out of the questionnaire. They were advised that they were free to leave the canteen at that point even before the questionnaires were handed to them. They were advised that they could omit the answer to any question or all of the questions after reading them over. They were asked not to answer any question if they didn't understand it thoroughly.

They were requested to ask counsel concerning the meaning of any words, phrases, or statements which were contained in the questionnaire that they did not understand. They were requested to answer each question truthfully if they answered it and to state the facts whether they thought them unfavorable to the company or not. They were requested not to compare answers to the questionnaire among themselves, to give independent answers in accordance with the facts as each understood them to be. They were requested not to answer questions by conjecture and to state only facts of which they were certain.

They were advised that they had a right to engage in union activities prior to the election, and for that matter at the present or any time in the future. They were also told that the company had no right to interfere with their union activities in any manner.

At that point the employees were asked whether all the foregoing statements were clear to each of them and whether any of them had any questions to ask concerning their rights in connection with the filling out of the ques-

added "then he told me (the union) didn't do him any good." She denied that she had asked Russell what would happen if the union came in and that she was afraid of losing her shift because of lack of seniority.

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They were advised that they had a right to engage in union activities prior to the election, and for that matter at the present or any time in the future. They were also told that the company had no right to interfere with their union activities in any manner.

At that point the employees were asked whether all the foregoing statements were clear to each of them and whether any of them had any questions to ask concerning their rights in connection with the filling out of the ques-

tionnaire. Counsel then read each question aloud and asked each employee if the question was clear to him. Thereupon, each employee filled out his questionnaire independently and without assistance of counsel.

Each employee signed each page of the questionnaire and the certification at the end of the questionnaire to the effect that the answers were given voluntarily. The signature of each employee was witnessed by another employee who was present at the time the questionnaire was signed. Each employee was requested to read the questionnaire and his answers over again before finally giving the questionnaire to the petitioner's counsel.

After the questionnaires were filled out each employee was again advised of the purpose of the questionnaire and asked whether he understood his answers thereto were voluntary. After the employees finished reading the questionnaire they were requested to ask other employees in their departments to come into the canteen in groups of four and five employees, and they were asked or told by the supervisors to go down to the canteen which they did. There is no evidence that any of petitioner's officers or supervisors were present during the interviews.

The questionnaire contained 28 questions including a number which the General Counsel and the union contended at the hearing were outside the scope of the issues framed by the pleadings, exceeded the permissible scope of trial preparations, and constituted an unfair labor practice.

HENRY J. FOX

JAMES F. KENNEY

Attorneys for Petitioner

1002 Ring Building

Washington 6, D. C.

BERNARD DUNAU

Attorney for Respondent

Dated: November 29, 1949

BRIEF FOR PETITIONER

in Support of

**Petition for Review of, and to Set Aside
an Order of the National Labor Relations Board**

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,433

JOY SILK MILLS, INC., *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

HENRY J. FOX,
JAMES F. KENNEY,
1002 Ring Building,
Washington 6, D. C.
Attorneys for Petitioners
United States Court of Appeals
District of Columbia Circuit

Of Counsel:

POSNER, BERGE, FOX AND ARENT
1002 Ring Building
Washington 6, D. C.

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Joseph W. Stewart

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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 10,433

JOY SILK MILLS, INC., *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

BRIEF FOR PETITIONER

IN SUPPORT OF

**PETITION FOR REVIEW OF, AND TO SET ASIDE AN
ORDER OF THE NATIONAL LABOR RELATIONS
BOARD**

DEFINITIONS

For purposes of convenience and brevity, the following terminology is employed throughout this brief:

The terms "Petitioner" and "Respondent" mean Joy Silk Mills, Inc., a South Carolina corporation.

The term "Union" means United Textile Workers of America, affiliated with the American Federation of Labor.

The term "Act" means the National Labor Relations Act, Act of July 5, 1935, c. 372, § 1, 49 Stat. 449, 29 U.S.C. § 151 *et seq.* (1946), as amended by the Labor Management

Relations Act, 1947, Act of June 23, 1947, c. 120, Title I, § 101, 61 Stat. 136; 29 U.S.C. § 151 *et seq.* (Supp. 1948).

The term "Board" means the National Labor Relations Board.

The term "Order" means the Decision and Order of the National Labor Relations Board, Dated September 13, 1949, of which review is sought.

JURISDICTIONAL STATEMENT

This is a proceeding to review an Order of the Board holding that Petitioner engaged in certain conduct, including a refusal to bargain collectively with the Union on and after September 24, 1948, in violation of Sections 7, 8(a)(1) and 8(a)(5) of the Act, and ordering Petitioner to bargain with the Union, upon request, and to take other affirmative action (App. 9-16).

On February 24, 1949, the Board issued a complaint against Petitioner alleging that on and after September 15, 1948, Petitioner was engaged in interstate commerce within the meaning of Section 2(6) and (7) of the Act and had committed certain unfair labor practices prohibited by the Act (App. 4).

Petitioner answered the complaint, admitting the jurisdictional averments thereof, but denying that it had engaged in the unfair labor practices alleged (App. 8).

The Order of the Board complained of in this proceeding was entered September 13, 1949 (App. 9). On September 17, 1949, Petitioner, being aggrieved and adversely affected thereby, filed its petition for review of said Order and to set it aside (App. 71). A copy of the petition was served on the Board by the Clerk of this Court on September 19, 1949. On October 28, 1949, the certified record of the proceedings before the Board was filed in this Court.

On October 28, 1949, the Board filed its answer to the petition for review and requested enforcement of its Order (App. 75).

This Court has jurisdiction of this proceeding pursuant to the provisions of Sections 10(e) and 10(f) of the Act.

STATEMENT OF THE CASE

1. Petitioner's Position on Questions Involved in this Case.

The principal question involved in this case is whether Petitioner refused to bargain with the Union in violation of Section 8(a)(5) of the Act. The Trial Examiner found affirmatively that Petitioner had a good faith doubt that the Union represented a majority of its employees at the time of the Union's request to bargain on September 24, 1948 (App. 32-34). He further found affirmatively that there was no evidence that Petitioner had engaged in any conduct in violation of the Act until shortly before the consent election (App. 34). Despite these affirmative findings of the Trial Examiner, the Board concluded that Petitioner refused to bargain with the Union on September 24, 1948, in violation of Section 8(a)(5) of the Act (App. 12). The Board's conclusion is based upon two inferences. The first inference is that an isolated statement of Petitioner which violated Section 8 (a)(1) of the Act one week prior to the Board election and other such conduct which occurred on the day before and the day of the election were evidence that Petitioner did not have a good faith doubt that the Union represented the majority on those dates. The second inference, drawn from the first one, is that Petitioner did not have a good faith doubt of the Union's majority at the time Petitioner refused to recognize it approximately three weeks earlier on September 24, 1948 (App. 11, 12). It is Petitioner's position that both inferences are unreasonable and do not constitute substantial evidence necessary to support the Board's findings and conclusion that Petitioner violated Section 8(a)(5) of the Act. Moreover, the Union failed to make an unequivocal, express request to bargain as required by the Act.

The second problem, involving privileged speech, has two aspects. (1) Whether Petitioner's statement to employees, shortly before the Board election, referring to an improvement in working conditions, was a violation of Section 8 (a)(1) of the Act in the light of all the cir-

cumstances relating to it (App. 87-93); (2) whether a statement of Petitioner's president, in response to an employee's question, that Petitioner would institute a system of shift rotation if a majority of the employees voted for it, constituted a violation of Section 8(a)(1) of the Act (App. 115). It is Petitioner's position that these statements were privileged because they related to changes which were part of Petitioner's program which was conceived and commenced long before the advent of the Union, and that in any event they were promised to the employees regardless of the outcome of the election.

The last question involved in this case is whether certain questioning of Petitioner's employees by its counsel in the course of preparing for the Board hearing on the complaint violated Section 8(a)(1) of the Act (App. 79-81, 164-166). It is Petitioner's position that the inquiries were privileged because the allegations of the Board's complaint were so broad, vague, and indefinite that its counsel was necessarily compelled to interview the employees to prepare an adequate defense.

2. The Business of Petitioner.

Petitioner is a South Carolina corporation with its principal office and place of business at Hartsville, South Carolina. It is engaged in the business of twisting, throwing and other processing of its customers' yarn and thread upon a commission basis. Petitioner's small modern plant normally employed from 50 to 60 employees, divided among three shifts. Its managing officers were S. C. Gilbert, President; H. P. Southerland, General Manager; and Raymond Russell, Plant Superintendent. (App. 152, 153.)

3. Proceedings Before National Labor Relations Board.

On February 24, 1949, the General Counsel of the Board issued a complaint against Petitioner alleging that it had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Sections 2(6),

2(7), 8(a)(1) and 8(a)(5) of the Act (App. 4). The complaint was based upon an amended charge filed October 29, 1948, by the Union and alleged in substance that on and after September 15, 1948, Petitioner, by its officers, agents, and employees interfered with, restrained and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act in violation of Section 8(a)(1) of the Act; and that Petitioner, on or about September 23 and 24, 1948, and thereafter, refused to bargain with the Union which represented a majority of its employees in an appropriate unit, in violation of Sections 8(a)(1) and 8(a)(5) of the Act (App. 2).

Pursuant to notice, a hearing was held in Hartsville, South Carolina, on March 22 through 25, 1949, before a Trial Examiner designated by the Board. On May 27, 1949, the Trial Examiner issued an Intermediate Report and Recommended Order (App. 16).

Thereafter, Petitioner filed exceptions and a brief in support thereof with the Board (App. 67). The Board rendered its Decision and Order on September 13, 1949 (App. 9).

4. Facts Upon Which the Board Order is Based.

a. Bargaining History and Initial Union Activities.

The first Union activity among Petitioner's employees occurred in October 1946. At that time the Union initiated a representation proceeding with the Board and petitioned for an election to determine whether it represented a majority of the employees. The election resulted in a rejection of the Union by a large majority. (App. 86, 127.)

Toward the middle of the summer of 1948 Petitioner lost a substantial customer and was threatened with the loss of others because of many defects in the quality of its work (App. 139). In order to correct this situation Petitioner employed an experienced plant superintendent on August 15, 1948, and initiated a campaign among the employees which emphasized increased quality and efficiency. These

circumstances were resented by some of the employees and created a misunderstanding among them concerning the status of Zim Byrd, the first shift foreman and a favorite personality among the employees. They believed that the new plant superintendent, Raymond Russell, had been employed to replace Byrd and that the latter would be ultimately discharged. (App. 116, 139, 140, 154).

This concern for Byrd resulted in spontaneous concerted activity among the employees on September 15, 1948, when a group of first shift employees requested S. C. Gilbert, president of Petitioner, to reinstate Byrd. When Gilbert did not adjust this grievance to their satisfaction, they began the formation of a union later that same evening. Helen Watson, a first shift employee, obtained a supply of membership cards and signed up the employees as the third shift reported for work and the second shift completed their work. Approximately 37 of the employees signed Union authorization cards that same evening and the following morning. Almost all of those who signed cards did so within 18 hours after the conference with Gilbert on September 15. (App. 154).

The next morning the first shift employees, with a few exceptions, did not report for work as usual but instead congregated outside the main entrance of the plant. At Gilbert's request, the leaders of the walkout conferred with him in the plant about 9:30 A. M. At this time they renewed their demand for the reinstatement of Byrd and added, for the first time, a demand for a paid vacation. Gilbert agreed to neither request, although later in the morning he advised the leaders that Petitioner would grant the request for a paid vacation. At noon, he also offered to pay the first shift for a full day if they would return to work immediately. The employees did not accept the offer and the walkout continued through September 17. (App. 154).

On Saturday, September 18, a non-work day, two of the leaders of the walkout sent a message to Gilbert informing him that the employees would report for work on September 20, the next regular work day. On September 19 the

walkout leaders met with Gilbert and Southerland, at Gilbert's request, in order to reach an understanding of the basis on which the employees would return to work. At this conference the leaders requested that Southerland and Russell be stripped of all disciplinary authority in the plant and that Byrd be placed in complete charge of the employees. These unreasonable demands were rejected by Gilbert and Southerland. However, the promise with respect to paid vacations was again confirmed. Work was resumed on Monday, all shifts reporting as usual. (App. 119, 139, 154, 155).

At no time during any of the foregoing conferences did either the employees or Petitioner's officials make any reference to or even mention the Union or Union activity¹ (App. 155). The Board found that although Petitioner learned of the Union activities of its employees on September 15, 1948, "It had no knowledge, however, of the extent to which the campaign had been successful." (App. 32).

b. Circumstances Relating to Union's Request for Recognition.

On September 24, 1948, Gilbert received a long-distance telephone call from Joseph Jacobs, Southern Director of the Union, in Atlanta, Georgia. There was a sharp conflict in testimony concerning the contents of this conversation but the Trial Examiner resolved it in favor of Jacobs' version of the facts, hereafter set forth:

I told him that I was the Southern Director of United Textile Workers . . . , and that I was calling him to see whether he would recognize us as a collective bargaining agent for production and maintenance employees at the plant, because we had been authorized to represent them, . . . He said he thought that had been settled before in an election² at the plant.

* * * * *

¹ At the hearing held on March 22-25, 1949 it was shown that by this time a majority of employees had signed union authorization cards (App. 154).

² Gilbert referred to the election in 1946 in which the Union had been rejected (p. 5, *supra*).

I told him I understood there had been an election but that had been some years ago . . . and . . . as long as it was over a year that means we have a right at any time to ask for collective bargaining rights He said, 'No he would prefer that the Board handle it.' I then said there were other ways of doing it instead of having an election and I said we would make a cross-check of the cards so that he and myself might be able to agree upon some person who would be impartial, and we could trust, and who would turn the cards over to them and he would turn the payroll over and check to see whether or not we had a majority and if we had, we could arrange a stipulation in the agreement and be recognized.

... He said he preferred to let the Board handle it . . . I asked what his attitude would be to a consent election. He said he didn't know, but would prefer letting a regular routine take place through the National Labor Relations Board. I told him, well, if he preferred that way I would go ahead and file the Petition, and he would probably hear from the Board. I think some pleasantries were exchanged, that I would probably see him to arrange for the election. (App. 102, 103).

A few hours after this telephone conversation, Gilbert received the following letter from Union Organizer Earle R. Britton, President of the South Carolina Federation of Labor. The letter was postmarked Columbia, South Carolina and dated September 23, 1948 (App. 82):

I have more than thirty percent of the employees of the Joy Silk Mill, Inc., who have signed cards authorizing the United Textile Workers of America to bargain for themselves under the Labor-Management Relations Act of 1947. As a representative of the American Federation of Labor, the United Textile Workers of America one of our affiliated International Unions, I am proceeding to petition the National Labor Relations Board to order an election in the plant of Joy Silk Mill. Should you be willing to have a consent election, I believe it will be to the advantage of all concerned.

May I have as early a reply as possible.³

³ Although Jacobs testified that a copy of this letter was in his possession at the time he called Gilbert on September 24, he made no reference to it in the conversation (App. 102, 103, 108).

Immediately after his telephone conversation with Gilbert, Jacobs filed a representation petition with the Board's Atlanta Regional Office. On the afternoon of the same day, Gilbert received another long-distance telephone call from Paul M. Patterson, Field Examiner for the Board, located in the Atlanta Office. He advised Gilbert that the Union had filed a petition with the Board and asked Gilbert if he would agree to a consent election. (App. 156, 157). Whereupon, Gilbert asked Patterson:

... if there was some other kind of election and he said yes and told me and I said 'well, I don't want to reach a decision and I will not reach a decision now, not until I get in touch with our attorney.' He said that was all right. (App. 123).

c. The Election Arrangements, Pre-election Events and the Election.

Less than one week later, September 30, 1948, a meeting was held at Petitioner's plant for the purpose of arranging a consent election. Present were Patterson, representing the Board; Southerland and Petitioner's counsel, representing Petitioner; and Jacobs, representing the Union. The meeting was conducted in an atmosphere of complete cooperation and good will as evidenced by Patterson's official account of the proceeding. (App. 83-85). Even Jacobs volunteered in his testimony with respect to this meeting that "I have not tried to intimate that it wasn't at all friendly or that any of the parties acted in bad faith. I did not intend to intimate that at all." (App. 111). Although Petitioner had some doubt concerning the Board's jurisdiction because of a recent change in its operation, it tentatively agreed to all necessary arrangements for a consent election to be held on October 19, 1948. Its consent became final a few days later after counsel had resolved the doubt concerning jurisdiction. (App. 28, 29, 33).

Although Jacobs testified on cross examination that the purpose of the September 30 meeting was to settle the details of the consent election, if possible (App. 111), he

added as an afterthought that almost the last thing he said when he left the meeting was "We could obviate all of this if we could sit down and get a contract." (App. 110, 111). Southerland, who was present at the meeting, denied that Jacobs made any request to bargain at the meeting (App. 145, 146), and Patterson's official account of the proceedings made no reference to such a suggestion (App. 83).

On October 7, 1948, Petitioner posted a declaration of policy, signed by Gilbert, on the employees' bulletin board (App. 85). With respect to Petitioner's conduct up until this date, the Trial Examiner found that Petitioner "did not during the period from September 15 to 30, both inclusive, engage in acts which constituted interference, restraint or coercion" (App. 156) and that up until October 7, 1948, "there is no evidence that respondent was at all concerned about the outcome of the election or that it had endeavored in any manner to interfere with the choice of a bargaining representative by its employees." (App. 34).

On October 12 and 18, 1949, Petitioner read prepared statements to the employees advising them, among other things, of their rights under the Act and their freedom to exercise those rights, regardless of Petitioner's views (App. 87, 93, 98).

Subsequent to Jacobs' telephone call of September 24, Gilbert, acting on the advice of counsel, immediately instructed Petitioner's supervisors to refrain from questioning employees about the Union or Union activity, to refrain from threatening, promising or spying upon them in any manner and to remain non-committal concerning employees' activities in the mill (App. 157).

There were considerable and sharp differences between the testimony of Petitioner's witnesses and those of General Counsel with respect to alleged statements and actions of Raymond Russell, Plant Superintendent, and Carpenter, Petitioner's bookkeeper and one-man office force, which occurred on the day preceding and on the day of the election (App. 43, 47). The Board resolved most of these conflicts against Petitioner's witnesses and found that Russell and

Carpenter engaged in conduct which was in violation of Section 8(a)(1) of the Act on October 18 and 19, 1948 (App. 53, 54).

With respect to Petitioner's conduct subsequent to October 7, the Trial Examiner found that sometime between October 7 and October 12, Petitioner's attitude of impartiality and unconcern underwent a reversal (App. 34), that "notwithstanding its initial *bona fides* respondent could no longer be heard to say it entertained an honest doubt as to the union's representative's status . . ." He thereupon concluded that the acts of Petitioner on October 12, 18 and 19, 1948, which he found to be violations of Section 8(a)(1) of the Act also constituted a refusal to bargain collectively with the Union in violation of Section 8(a)(5) of the Act. (App. 55). However, the Board took the position that the refusal to bargain occurred on September 24, 1948, in the course of Jacobs' telephone call with Gilbert (App. 12).

The Board also found that Gilbert's reference to a rest period at Petitioner's expense contained in his prepared statement to employees on October 12, and Gilbert's remark on October 18, in response to an employee's question, that he would start shift rotation if a majority of the employees voted for it were both violations of Section 8(a)(1) of the Act (App. 51, 52).

The election was held on October 19 as scheduled. The Union was defeated 32 votes to 16, with 9 additional votes being challenged by either Petitioner or the Union (App. 21). Immediately after the election, Petitioner posted a notice on the employees' bulletin board urging the employees to forget their differences and cooperate for their mutual benefit, and stating that Petitioner respected their right to vote as they pleased in the recent election (App. 87).

On October 25, 1948, the Union filed a protest and objections to the conduct of the election (App. 21). On October 28, 1948, it filed charges of unfair labor practices with the Board and on October 29, 1948, it filed an amended charge with the Board (App. 16). On January 25, 1949,

the Regional Director sustained the Union's objections, set aside the election and ordered another election (App. 21). This report was served upon Petitioner, with the complaint in this matter on February 26, 1949. On March 3, 1949, the Union, with the approval of the Regional Director, withdrew its representation petition without prejudice (App. 21).

d. Counsels' Preparation for Hearing.

The Board found that certain prehearing preparation by Petitioner's counsel constituted a violation of Section 8(a)(1) of the Act. The facts upon which the Board based its conclusion were stipulated as follows:

Counsel for the Petitioner, on or about March 10 and 11, 1949, submitted a questionnaire to a substantial number of Petitioner's employees employed during the months of September and October, 1948. Counsel prepared the questionnaire in the course of preparation and investigation of the facts alleged in the complaint. Before preparing the questionnaire, Petitioner's counsel called the Board's Regional Director in Atlanta by telephone and informally requested the Chief Law Officer of the Region for a more definite statement of the facts in order to prepare Petitioner's defense in the hearing. This request was refused whereupon Petitioner's counsel filed a motion for a more definite statement on the same basis and also filed its answer. The motion was referred to the Trial Examiner and was granted in part but the requested information was not furnished Petitioner under the Trial Examiner's order until the morning of March 22, 1949, at the start of the hearing.

The questionnaire was submitted to and answered by the employees of the Petitioner under the following circumstances.

They were interviewed in the canteen in groups of from four to eight employees on company time. Counsel introduced themselves by name to the employees and advised them that they represented the company as attorneys. They told the employees that the purpose of the questionnaire which was to be given them

was to enable counsel to prepare the company's defense in the hearing that was to take place on March 22. The employees were advised that the filling out of the questionnaire was completely voluntary and that there would be no reward, no promises, threats or coercion of any kind connected with the filling out of the questionnaire. They were advised that they were free to leave the canteen at that point even before the questionnaires were handed to them. They were advised that they could omit the answer to any question or all of the questions after reading them over. They were asked not to answer any question if they didn't understand it thoroughly.

They were requested to ask counsel concerning the meaning of any words, phrases, or statements which were contained in the questionnaire that they did not understand. They were requested to answer each question truthfully if they answered it and to state the facts whether they thought them unfavorable to the company or not. They were requested not to compare answers to the questionnaire among themselves, to give independent answers in accordance with the facts as each understood them to be. They were requested not to answer questions by conjecture and to state only facts of which they were certain.

They were advised that they had a right to engage in union activities prior to the election, and for that matter at the present or any time in the future. They were also told that the company had no right to interfere with their union activities in any manner.

At that point the employees were asked whether all the foregoing statements were clear to each of them and whether any of them had any questions to ask concerning their rights in connection with the filling out of the questionnaire. Counsel then read each question aloud and asked each employee if the question was clear to him. Thereupon, each employee filled out his questionnaire independently and without assistance of counsel.

Each employee signed each page of the questionnaire and the certification at the end of the questionnaire to the effect that the answers were given voluntarily. The signature of each employee was witnessed by another employee who was present at the time the questionnaire was signed. Each employee was requested

to read the questionnaire and his answers over again before finally giving the questionnaire to the Petitioner's counsel.

After the questionnaires were filled out each employee was again advised of the purpose of the questionnaire and asked whether he understood his answers thereto were voluntary. After the employees finished reading the questionnaire they were requested to ask other employees in their departments to come into the canteen in groups of four and five employees, and they were asked or told by the supervisors to go down to the canteen which they did.⁴

The questionnaire contained 28 questions including a number which the General Counsel contended at the hearing were outside the scope of the issues framed by the pleadings, exceeded the permissible scope of trial preparations and constituted an unfair labor practice. (App. 164-166).

The questions objected to were as follows:

5. Have you ever signed a card in connection with Union activities?

6. What was the nature of the card?

7. What did you consider to be the purpose of signing the card?

8. Did you consider yourself a member of the Union when you signed the card?

9. At the time you signed the card, did you pay any money for membership or other fees in the Union?

10. Did you agree to the future payment of any membership, initiation or other fees to the Union?

13. Did you terminate your connection with the Union at any time after you signed a card?

14. If so, for what reason did you terminate your connection with the Union?

⁴ The Board found that there was no evidence that any of Petitioner's officers were present during the interviews (App. 166).

21. Did you cast your vote at the election solely according to your own personal views concerning whether you desired the Union to represent you and without any fear or threats as to your job and future with the Company, and without being influenced in any respect by promises of future benefits by the Company?

25. Did you consider that these speeches or the statements or notices on the bulletin board were threats or promises of benefits to influence your vote against the Union?

The Board found that each of the foregoing inquiries with the exception of Questions 5 and 6, were coercive and in violation of Section 8(a)(1) of the Act. (App. 58, 61).

STATUTE INVOLVED

The National Labor Relations Act, Act of July 5, 1935, c. 372, §1, 49 Stat. 449, 29 U.S.C. §151 *et seq.* (1946), as amended by the Labor-Management Relations Act, 1947, Act of June 23, 1947, c. 120 Title I, § 101, 61 Stat. 136, 29 U.S.C. §151 *et seq.* (Supp. 1948.) The pertinent provisions of the Act follow:

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

Other provisions of the Act to which reference is made herein are set forth at the end of this brief for reference purposes.

STATEMENT OF POINTS

1. The Board erred in finding that the Union requested Petitioner to bargain.

2. The Board erred in finding that Petitioner's refusal to recognize the Union on September 24 was not motivated by a good faith doubt of the Union's majority.

3. The board erred in concluding that Petitioner violated Section 8(a)(5) of the Act.

4. The Board erred in concluding that Petitioner's reference, in its prepared statement, to a rest period for its employees was a violation of Section 8(a)(1) of the Act.

5. The Board erred in concluding that Petitioner's statement, in response to an employee's question, concerning the possible institution of shift rotation in the plant, if a majority of the employees wanted it, was a violation of Section 8(a)(1) of the Act.

6. The Board erred in concluding that certain inquiries of Petitioner's employees by counsel for Petitioner during prehearing investigation were violations of Section 8(a)(1) of the Act.

7. The Board erred in issuing an Order directing Petitioner to cease and desist from refusing to bargain with the Union and to bargain with the Union upon request.

SUMMARY OF ARGUMENT

I. The Board concluded that Petitioner refused to bargain with the Union in violation of Section 8(a)(5) of the Act on September 24, 1948, and continuously thereafter. The key finding of fact which supports this conclusion is that Petitioner's refusal to recognize the Union on that date was not motivated by a *bona fide* doubt of the Union's majority but rather to gain time to undermine the Union's support. This critical finding is not supported by substantial evidence on the record considered as a whole.

It is settled law that an appropriate request to bargain is a condition precedent to a finding of unlawful refusal to bargain and that the request must be specific and unequivocal. There was no such request in this case, since the Union's only communications with Petitioner did not either claim a majority or request recognition.

Assuming, *arguendo*, that the Union requested recognition on September 24, 1948, and this constituted a request to bargain, it is settled that Petitioner may in good faith insist upon a Board election as proof of the Union's status as bargaining agent under Section 9(a) of the Act. The question of good faith must be determined by direct evidence, if available, but at the very minimum the finding must rest upon reasonable and warranted inferences.

The Board's finding that Petitioner did not have a good faith doubt of the Union's majority on September 24 ignores direct contrary evidence on this issue in favor of speculative and conjectural inferences. Significant factors in determining the question of Petitioner's good faith such as its resort to or abstinence from dilatory tactics, its willingness or unwillingness to consent to an election, the sequence of events, the lapse of time between the refusal and the commission of any unfair labor practices and the character of unfair labor practices have been ignored in this case. The record shows that Petitioner's attitude and actions prior to, on, and for a considerable time after the date upon which it refused to recognize the Union were beyond reproach in every respect. Such facts are wholly inconsistent with the Board's finding that the refusal on September 24 to recognize the Union was motivated by a desire to gain time within which to undermine the Union.

The Board's finding that Petitioner's refusal to recognize the Union on September 24 was in bad faith rests upon unwarranted inferences piled one upon the other and totally unsupported by factual evidence in the record. Although it is conceded that the Board may draw reasonable inferences from the evidence, it is well established that the Board is not entitled to pyramid inferences as a substitute for

facts as it has done in this case. The Courts have condemned such findings as not being supported by substantial evidence. Although the Board is not bound by the findings or conclusions of its Trial Examiner, where, as in this case, it reaches an opposite conclusion, the findings of the Trial Examiner materially detract from the conclusion of the Board and Courts must give the evidence a more detailed examination than ordinarily is necessary. When subjected to such an analysis it is clear that there is not substantial evidence supporting the vital findings in this case.

II. The Board concluded that Petitioner's reference in a prepared statement to rest periods planned for employees was a promise of a future benefit calculated to interfere with the employees' free choice of a bargaining representative in violation of Section 8(a)(1) of the Act. The record proves, however, that the reference to the rest period merely related to the fact that when the equipment for the employees' canteen became available, they would thereafter eat their lunches there instead of in the plant. The employees were well aware of this fact long before the advent of the Union since construction of the canteen for that specific purpose had been commenced over one year before. Assuming, however, that the reference to the rest period can be construed as a promise of future benefit, it still is not a violation of the Act because of the circumstances surrounding its announcement. Petitioner unequivocally advised the employees that regardless of the outcome of the election, it would continue its long-established policy of improving working conditions wherever and whenever possible. This Court has held that employers are not precluded from announcing employee benefits during a Union organizational campaign.

The Board also concluded that Petitioner's statement, in response to an employee's question, that shift rotation would be instituted if a majority of the employees wanted it, was a violation of Section 8(a)(1) of the Act. There is no evidence in the record, however, nor can it be presumed,

that rotation of shifts is a benefit to employees. The statement concerning it was made in direct response to a question asked by an employee who was one of the Union leaders. It was clearly stated that whether or not shift rotation would be instituted depended upon the desires of the employees without reference to the outcome of the election. Even apart from that fact, shift rotation was a topic of common discussion among employees long prior to the advent of the Union. This answer to the employee's question is neither coercive nor even a promise. It amounts to no more than a statement of the manner in which Petitioner proposed to handle an administrative problem.

III. The Board concluded that certain inquiries on a questionnaire submitted to the employees by Petitioner's counsel in preparation for the Board hearing constituted violations of Section 8(a)(1) of the Act. The inquiries were all pertinent to allegations contained in the complaint. It is well-established that Petitioner is privileged to interview employees for the purpose of discovering facts within the limits of the issues raised by an unfair labor practice complaint. In this case the complaint was unusually broad, vague and general. Petitioner's request to the Regional Director to make the allegations of the complaint more specific was denied. Later the Trial Examiner granted Petitioner's motion to make the complaint more specific but the information was not furnished to Petitioner until the hearing started. Under these circumstances it was necessary for Counsel to conduct an extensive investigation to prepare an adequate defense to the complaint. The Board erroneously held that since certain inquiries did not elicit information which was, in its opinion, material to the complaint, they were *per se* coercive and a violation of Section 8(a)(1) of the Act. The proper rule is that unless the inquiries were reasonably calculated to coerce or improperly influence the employees in the exercise of their rights they are not violations of the Act.

ARGUMENT

I. The Board's Conclusion That Petitioner Refused to Bargain with the Union in Violation of Section 8(a) (5) of the Act Is Erroneous Because the Findings on Which It Is Based Are Not Supported by Substantial Evidence.

A. The Union did not request Petitioner to bargain when it asked for recognition on the long distance telephone.

The decision of the Supreme Court of the United States in *N.L.R.B. v. Columbian Enameling & Stamping Company*, 306 U.S. 292, 297 (1939) establishes that a condition precedent to a finding of unlawful refusal to bargain is a prior appropriate request. The Court stated:

To put the employer in default here the employees must at least have signified to respondent their desire to negotiate. . . . The employer cannot under the statute be charged with refusal of that which is not proffered.

Not only is a request necessary, but it must be "a specific request" to bargain. *N.L.R.B. v. Burke Machine Tool Co.*, 133 F.2d 618 (6th Cir. 1943); Accord, *N.L.R.B. v. Sands Manufacturing Co.*, 306 U.S. 332, 343-344 (1939).⁵ In the instant case, it is clear that the Union at no time made a specific request to bargain with Petitioner. However, the Board found that Jacobs' inquiry, in his telephone conversation with Gilbert on September 24, as to whether Petitioner would recognize the Union as the collective bargaining agent for its employees, because the Union had been authorized to represent them, and his offer during the same conversation to employ a cross-check to determine "whether or not we had a majority" constituted an express assertion by the Union that it represented a majority of Peti-

⁵ See *Reliance Manufacturing Company v. N.L.R.B.*, 125 2d 311 (7th Cir. 1941); *Andrew Jergens Company*, 27 N.L.R.B. 521 (1940); *South Texas Coaches, Inc.*, 22 N.L.R.B. 502 (1940).

tioner's employees and was an express request to bargain.⁶ The record shows that Jacobs did not tell Gilbert how many employees had authorized the Union to represent them or how many employees constituted the appropriate unit. The Board further found that Jacob's offer to make a cross-check at the September 30 conference, which was arranged for the purpose of settling details of a consent election, and his statement at the end of the conference that "we could obviate all of this if we could sit down and get a contract" was an express request to bargain.

Assuming there is substantial evidence to support the Board's finding that Jacobs' testimony is to be credited in the light of the contrary evidence offered by Petitioner, nevertheless, it clearly appears that the Union failed to make a clear and unequivocal demand for recognition which is an indispensable requisite for a conclusion of unlawful refusal to bargain. In *Joseph Solomon*, decided June 14, 1949, 84 N.L.R.B. No. 29, the Board clearly defined the nature of the requisite demand. It held that a union's letter⁷ informing the company that it represented

⁶ The Trial Examiner found that Jacob's request to bargain was not express but rather implicit in his conversation on September 24 (App. 30). This finding was overruled by the Board in favor of the finding set out above (App. 10).

⁷ Full text of the Union's letter in the *Solomon* case requesting recognition follows [found on p. 10 of Intermediate Report]:

Dear Sir:

This correspondence is to notify your Company that the United Garment Workers of America represent the majority of the employees employed at your plant.

On this day the United Garment Workers of America affiliated with the American Federation of Labor are petitioning the Government's National Labor Relations Board at Atlanta, Ga., for an election to determine bargaining rights of the Majority vote of the employees at your plant to ascertain whether the employees want us to represent them as their bargaining representatives the United Garment Workers of America, by an election.

To eliminate an election or the red tape of the National Labor Relations Board, the United Garment Workers wishes the Company will agree to a cross check of cards, if the union represents the majority when this cross check of cards [sic] enabling the United Garment Workers to be certified by the National Labor Relations Board as bargaining representative and assisting those employees in collective bargaining to negotiations of [sic] wages, conditions and a contract, as provided under the Taft-Hartley Act.

Trusting you will concede to work for the best interest of your employees and granting them this cross check of cards against the company pay roll, enabling them to have the proper representation, without delay. Which will eliminate an election, further delay, and will bring about better co-operation, better production and above all satisfied employees which will be a great stride for the progress of your Company in Leeds, Ala.

* * * *

a majority of its employees and was filing a petition with the Board requesting an election and requesting the company's participation in a cross-check to determine the Union's majority did not constitute a clear and unequivocal demand for recognition and, therefore, could not be the basis of a refusal to bargain by the employer. See *Killefer Manufacturing Corporation*, 22 N.L.R.B. 484 (1940). A comparison of the letter in the *Solomon* case with the facts here upon which the Board grounds its findings that the Union requested recognition in the instant case demonstrates that there is no factual basis to support the finding that the Union made a request to bargain. Indeed, the request in the *Solomon* case which the Board found inadequate is much stronger than in the case at hand where the Union at no time unequivocally advised Petitioner that it had a majority, or sought a conference with Petitioner for the purpose of bargaining.

B. The Board's finding that petitioner did not have a good faith doubt of the Union's majority on September 24 ignores the direct contrary evidence in the record in favor of speculative and conjectural inferences, without factual basis.

The critical issue with respect to the alleged violation of Section 8(a)(5) is whether Petitioner had a good faith doubt of the Union's majority when the latter requested recognition on September 24. The Trial Examiner made affirmative findings that Petitioner's refusal to recognize the Union on September 24 and September 30 was lawful, because it had a good faith doubt that the Union represented a majority of the employees (App. 32-34). He concluded, however, that Petitioner's acts in violation of Section 8(a)(1) of the Act which occurred on October 12, 18, and 19 demonstrated that Petitioner's doubts of the Union majority were no longer genuine and that such acts also constituted violations of Section 8(a)(5) of the Act.

Upon appeal to the Board, Petitioner pointed out in its brief in support of exceptions to the Intermediate Report

that the Board's own decisions⁸ precluded a finding of refusal to bargain where, as here, the refusal to recognize the Union on the only occasions requested, was justified by Petitioner's good faith doubt of the Union's majority. The Board, thereupon, reversed the Trial Examiner's finding that Petitioner had a good faith doubt of the Union's majority on September 24 and found, instead, that Petitioner's refusal to recognize the Union on September 24 was not motivated by a good faith doubt of the Union majority. The Board used this finding as the basis of its conclusion that Petitioner refused to bargain with the Union on September 24 in violation of Section 8(a)(5) of the Act. (App. 10-12).

It is well established that where the Board's "conclusion rests on inferences, such cannot prevail in face of direct evidence to the contrary." *A. E. Staley Mfg. Co. v. N.L.R.B.*, 117 F. 2d 868 (7th Cir. 1941). In the case at hand, the Board ignored completely the abundant positive evidence in the record which demonstrates that Petitioner had a good faith doubt of the Union's majority on September 24. To support its fundamental finding it relied instead solely upon two inferences drawn from tenuous circumstances. See *N.L.R.B. v. Sheboygan Chair Co.*, 125 F. 2d 436 (7th Cir. 1942).

The first inference is based on the Board's findings that on October 12, 18, and 19 Petitioner engaged in conduct which was a violation of Section 8(a)(1) of the Act. It inferred therefrom that Petitioner did not on those dates have a good faith doubt of the Union's majority. The Board then used this inference as a basis of a second inference that Petitioner did not entertain a good faith doubt of the Union's majority on September 24 when it refused to recognize the Union. (App. 12). Although it is conceded that the Board may draw reasonable inferences from evidence, it is well settled that the Board is not entitled

⁸ *Artercraft Hosiery Company*, 78 N.L.R.B. 333 (1948); *Chamberlain Corporation*, 75 N.L.R.B. 1188 (1948); *Roanoke Public Warehouse*, 72 N.L.R.B. 1281 (1947).

to pyramid inferences as a substitute for facts, as it has done in this case. Indeed, "the drawing of one inference upon another" has been "condemned" by the Courts on the ground "that findings reached in this manner were not supported by substantial evidence." *N.L.R.B. v. Pick Manufacturing Company*, 135 F. 2d 329 (7th Cir. 1943); *Interlake Iron Corp. v. N.L.R.B.*, 131 F. 2d 129 (7th Cir. 1942).

Thus it is clear that the Board's conclusion that Petitioner violated Section 8(a)(5) of the Act which is based upon a finding of this character fails to meet the substantial evidence requirement of Section 10(f) of the Act. In *Consolidated Edison Company of New York, Inc., v. N.L.R.B.*, 305 U.S. 197, 229 (1938) the Supreme Court defined substantial evidence:

Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Accord, *N.L.R.B. v. Austin Co.*, 165 F. 2d 592 (7th Cir. 1947); *N.L.R.B. v. May Department Stores Co.*, 154 F. 2d 533 (8th Cir. 1946).

The law is settled that Petitioner was entitled, in good faith, to request the Union to establish its majority status in a Board-conducted election. *North Electric Mfg. Co. v. N.L.R.B.*, 123 F. 2d 887 (6th Cir. 1941), cert. den. 315 U.S. 818 (1942); *N.L.R.B. v. Chicago Apparatus Co.*, 116 F. 2d 753 (7th Cir. 1940).⁹ Whether the Petitioner was in good faith when the Union requested recognition on September 24 must be determined upon consideration of all of the relevant facts and surrounding circumstances appearing of record. Among matters which have been held significant in prior Board decisions are the employer's resort to or abstinence from dilatory tactics, his willingness or unwillingness to consent to an election, the sequence of events, and the lapse of time between the refusal and the commis-

⁹ Accord, *N.L.R.B. v. Empire Furniture Corp.*, 107 F. 2d 92 (6th Cir. 1939); *N.L.R.B. v. Remington-Rand*, 94 F. 2d 862 (2nd Cir. 1938).

sion of any unfair labor practices. Unless it can be proven that Petitioner had already created an atmosphere of unfair labor practices at the time it stated that it preferred to let the Board resolve the representation question, or had immediately thereafter embarked upon such a pattern of vicious unfair labor practices that bad faith can be imputed to it at such time, it cannot be deemed to have violated Section 8(a)(5) of the Act. *Artcraft Hosiery Co.*, 78 N.L.R.B. 333 (1948); *Chamberlain Corporation*, 75 N.L.R.B. 1188 (1948); *Roanoke Public Warehouse*, 72 N.L.R.B. 1281 (1947).

Although the Board is not bound by the findings or conclusions of the Trial Examiner, nevertheless where, as in this case, it reaches an opposite conclusion, the findings of the Trial Examiner have a "bearing on the question of substantial support and materially detract therefrom." *Wyman-Gordon Co. v. N.L.R.B.*, 153 F. 2d 480 (7th Cir. 1946); *A. E. Staley Mfg. Co. v. N.L.R.B.*, 117 F. 2d 868 (7th Cir. 1941). Indeed, this Court has held that where there is a division between the Board and the Trial Examiner, it will give the evidence a more detailed examination "than ordinarily is necessary." *International Association of Machinists v. N.L.R.B.*, 110 F. 2d 29, 71 App. D. C. 175 (1939).

An examination of the record herein discloses the complete absence of any evidence which can reasonably be construed to impute bad faith to Petitioner on September 24.

The facts in the record bearing on Petitioner's attitude, mental state and actions on September 24, the date Gilbert refused to recognize the Union, are undisputed. They are adequately summarized by the following findings of the Trial Examiner:¹⁰

In the present case the evidence establishes that though refusing to recognize the union until the representation question was settled by a Board election, respondent engaged in no dilatory tactics whatsoever but cooperated in disposing of the matter expeditious-

¹⁰ The Board adopted the findings of the Trial Examiner to the extent that they were not inconsistent with its Decision and Order (App. 10).

ly by agreeing to a consent election. Respondent met with the Board's representative and Jacobs less than 1 week after the petition was filed and gave its consent to an election. Furthermore, the election was held less than 3 weeks after that meeting and less than 1 month after the union's original demand for recognition, without a single request for a delay or postponement.

Jacobs' call came a week after the peak of the earlier concerted activities and after the employees had voluntarily returned to work. And though it has been found that respondent had knowledge of the fact, during the week of September 15, that the employees were attempting to organize a union,¹¹ it committed no act of interference therewith. Indeed, the respondent might have assumed from the conference on the night of the 19th, and the return to work on Monday, that it had satisfactorily adjusted the employee grievances and that the employees had abandoned their efforts to organize a union.

Under these circumstances Gilbert could well have doubted Jacobs' claim of a majority and his right to demand recognition and could justifiably have indicated, in the light of the suddenness of the call and the apparent 'high pressuring,' that he wanted time to consult his attorney and would therefore prefer the case to follow 'routine' Board procedure. Furthermore, Gilbert was under the misapprehension that the representation question had been settled in the earlier proceedings. Though Jacobs endeavored to correct that misapprehension, Gilbert was entitled, of course, to seek the verification of his counsel; and there is no indication from the evidence that his expressed wish to take the matter up with his counsel was motivated either by bad faith or by the desire to gain time to undermine the union's asserted majority.

Neither do the events at the September 30 conference establish a refusal to bargain. There, according to Patterson's account, concurred in by Jacobs, the atmosphere was one of the fullest cooperation. There the respondent readily gave its tentative agreement to a consent election, reserving only a brief opportunity for its counsel to clear up a 'slight doubt' in his

¹¹ It had no knowledge, however, of the extent to which the campaign had been successful. [Trial Examiner's footnote].

mind as to whether, because of a recent change in the nature of respondent's business, its operations still effected interstate commerce. Patterson's account corroborates Jacobs' offer of a cross-check, but it also alludes to two reasons why respondent finally did not consent: respondent 'tended to question' the authenticity of the cards, and although the examiner agreed to make the check if the company consented, the suggestion was not insisted upon because there was not then sufficient time available in which to have the check made.

Respondent thereafter promptly resolved its doubt on the commerce question and gave its final consent to the election prior to October 7.

It is concluded and found that the evidence does not establish that down to that time a refusal to bargain had occurred. (App. 32-35).

The Trial Examiner found further:

Subsequent to the telephone call of September 24, Gilbert, acting on the advice of counsel, had immediately instructed petitioner's supervisors not to question the employees about the union or union activities, not to threaten or promise, not to spy on them in any manner, and not to have anything to say about their activities in the mill. On October 7, he posted a notice informing the employees of the election and of their right to vote freely therein. Those and other statements in the notice plainly qualified as free speech.

Down to that time there is no evidence that petitioner was at all concerned about the outcome of the election or that it had endeavored in any manner to interfere with the choice of a bargaining representative by its employees. (App. 157, 158)

The facts contained in the foregoing findings stand undisputed. They patently refute the Board's finding that Petitioner's refusal to recognize the Union on September 24 was motivated, not by a *bona fide* doubt of the Union's majority, but rather a desire to gain time in which to undermine the Union. Even if they could be construed to support inconsistent inferences, such evidence would fail

to meet the substantial evidence test. *Eastern Coal Corporation v. N.L.R.B.*, 176 F. 2d 131 (4th Cir. 1949).

It is established that prior to September 24, and certainly until October 12, the date of Petitioner's first alleged conduct in violation of Section 8(a)(1) of the Act, Petitioner had created no anti-union atmosphere. Its conduct was beyond reproach in every respect during this period. It would be virtually impossible for Petitioner, or indeed any employer, to have extended greater cooperation to the Union and the Board in resolving the question of representation. Petitioner met with the Union less than one week after its initial approach for the purpose of arranging a consent election. The election was held less than three weeks later. Since Petitioner could have insisted upon the normal Board procedures, including hearings, in resolving the representation question,¹² and thereby consumed many months, the Board's finding that Petitioner's refusal to recognize the Union on September 24 was motivated "by a desire to gain time within which to undermine the union" is obviously without logical basis.¹³

There is no evidence that subsequent to September 24 Petitioner embarked upon a pattern of vicious conduct in violation of the Act so that bad faith can reasonably be imputed to its refusal to recognize the Union on that date. The Board found that the first instance of such conduct occurred on October 12, just 5 days after Petitioner agreed to a consent election. This finding as to the date upon which Petitioner agreed to the consent election is without basis. The record unequivocally shows (App. 155) and the Trial Examiner found that Petitioner agreed to the election on September 30, "reserving only a brief opportunity to clear up a 'slight doubt' concerning

¹² Section 9(c) (1) (B) of the Act gives an employer an unequivocal right to utilize the Board's services when a Union asks for recognition.

¹³ There is a complete absence of any evidence in the record that Petitioner was informed by the Union, or ever knew that the Union represented a majority of the employees. Indeed, up until the very day preceding the election, there was not a single interrogation of employees of any character. And such instances of interrogation as did occur were not extended to, and did not in fact, reveal the degree of Union strength.

the Board's jurisdiction" and its final consent was given *prior* to October 7. Thus Petitioner's alleged violation of Section 8(a)(1) of the Act occurred *12 days* after Petitioner agreed to the consent election and *18 days* after the Union telephoned Petitioner on September 24. On October 12, Petitioner read a prepared statement to employees, which, in part, recited a list of past improvements in working conditions granted before the advent of the Union. Among them was a reference to a rest period at Petitioner's expense when the equipping of the canteen, which had just been constructed,¹⁴ was finally completed. Petitioner submits in a later section of this brief that this statement is privileged and not a violation of Section 8(a)(1) of the Act. In any event, even if it were held to be a violation of the Act, the relatively innocuous character of it cannot possibly give rise to the Board's inferences, first, that it demonstrates that Petitioner did not in good faith doubt the Union's majority on that day, and second, that it did not have such a good faith doubt 18 days previously.

On October 18 and 19 the day before and the day of the election, one of Petitioner's supervisory employees and one non-supervisory employee, held to be an agent, violated Petitioner's instructions (App. 157) and engaged in conduct which violated Section 8(a)(1) of the Act. These were relatively minor violations which occurred in the tense atmosphere created by the Union's pre-election campaigning on the day preceding and the day of the election. Nothing in their character can logically or reasonably be presumed which supports the inference that Petitioner did not in good faith doubt the majority of the Union on those dates. Certainly they do not afford a basis for inferring that Petitioner did not in good faith doubt the Union's majority on September 24, *25 days before*.

Not only has the Board violated the traditional presumption against bad faith in finding Petitioner's refusal to recognize the Union on September 24 was not in good

¹⁴ Construction had commenced on Petitioner's new building including the canteen in question over one year before the advent of the Union (App. 146).

faith,¹⁵ but it has ignored the fact that Petitioner's insistence that the Union prove its majority by an election is consistent with the public policy established by Congress.¹⁶ *General Box Co.*, 82 N.L.R.B. 678 (1949). It is readily apparent that in the absence of substantial evidence in the record, considered as a whole, supporting its finding that Petitioner did not in good faith doubt the Union's majority on September 24, its conclusion that Petitioner violated Section 8(a)(5) of the Act cannot be sustained. The Board may not substitute its so-called "expertness" for facts in the record in meeting the substantial evidence standard. House Conference Report No. 510, on H.R. 3020, p. 53-54, 55. This Report clearly reveals that one of the evils sought to be corrected by Congress when it amended the National Labor Relations Act in 1947 was that type of arbitrary action exemplified by the Board's Order in this case. See House Conference Report, *supra*, p. 53-55.

Since it is apparent that the finding of the Board that Petitioner did not have a good faith doubt of the Union's majority on September 24 is based solely upon evidence which gives rise to speculative inferences that cannot reasonably be accepted, such finding and the conclusion which it supports, should be rejected by this Court. *N.L.R.B. v. Mt. Clemens Pottery Co.*, 147 F. 2d 262 (6th Cir. 1945); *Ballston-Stillwater Knitting Co. v. N.L.R.B.*, 98 F. 2d 758 (2nd Cir. 1938).

¹⁵ *Boeing Airplane Company v. N.L.R.B.*, 140 F. 2d 423 (10th Cir. 1944).

¹⁶ The Board itself has recognized that an employer has a right to ask for a Board election, whether or not there exists any reasonable basis in fact upon which he may question the Union's majority. *J. C. Penney Co.*, 86 N.L.R.B. No. 109 (1949); *Continental Southern Corporation*, 83 N.L.R.B. No. 100 (1949).

II. The Board's Conclusions that Petitioner's Reference to Rest Periods and to Shift Rotation are Coercive are Erroneous Since both Statements Are Privileged Under the Act.

The Board found that Gilbert's reference to rest periods at Petitioner's expense and his answer to an employee's question concerning shift rotation were violations of Section 8(a)(1) of the Act. However, if each statement is examined in the light of its surroundings, it is manifest that there was no improper promise, threat, or coercive inference which could be drawn from either, and therefore, they are not proscribed by the Act.

1. The reference to the rest period was included in Petitioner's prepared statement read to employees on October 12, 1948 (App. 87). This statement recited a list of past benefits granted to employees by Petitioner before the advent of the Union, which is clearly privileged under the Act in the absence of a threat of loss of these benefits in the event the Union is successful. *Peter J. Schweitzer, Inc., v. N.L.R. B.*, 144 F. 2d 520, 79 U. S. App. D. C. 178 (1944). The reference to rest periods at Petitioner's expense was included among the list of past accomplishments. The record shows that construction of a building, including an employees' canteen, was commenced in 1947 (App. 146). The canteen building was completed in June 1948, but delays in delivery of equipment had postponed the opening. Long before the advent of Union activities in September 1948, the employees were aware that the canteen was built for their use and freely talked about it in the mill. The canteen finally was completely furnished and opened in January 1949. (App. 147). Previous to this time the employees had been allowed to eat in the mill at Petitioner's expense because of lack of other suitable place (Transcript p. 88). It is apparent that Petitioner's reference to rest periods merely referred to the already well known fact that, after the canteen was furnished, the employees would have their lunch period in the canteen in suitable surroundings.

In any event, even if the reference to the rest period can be construed as a promise of future benefit, it is still not proscribed by the Act when announced under the circumstances which obtained here. *Peter J. Schweitzer, Inc., v. N.L.R.B.*, 144 F. 2d 520, 79 U. S. App. D. C. 178 (1944). Cf. *Locomotive Finished Material Co.*, 52 N.L.R.B. 922 (1943). The background and the circumstances attending the reference to the rest period must be considered in determining whether it is a violation of Section 8(a)(1). *N.L.R.B. v. West Kentucky Coal Co.*, 152 F. 2d 198 (6th Cir. 1945). The record shows that the only previous communication of any sort which Petitioner made to its employees concerning the Union was the notice stating Petitioner's policy, dated October 7, posted on the bulletin board. This notice, after stating the employees' rights under the Act, concluded as follows:

regardless of how you vote in this election it will make no difference so far as your job with the Company is concerned. *Nor will it affect in any matter [sic] our present policy of improving wages and working conditions to the limit of our ability.* I want to emphasize that you are entitled to vote according to your own personal opinion, regardless of what my personal opinion, or your supervisors' opinions, or the Union's opinion may be (App. 86). (Emphasis supplied).

The record shows that thereafter Petitioner made no communications to the employees concerning the Union until its statement of October 12 which contained the announcement concerning rest periods. In this statement the paragraph following the summary of past accomplishments of Petitioner contains the following:

One thing further I promise you, we shall continue this policy so that it will never be necessary for you to call in a union to try to improve your wages or working conditions. *You will get no less or no more, regardless of whether there is a union here. We will always do the best to the utmost of our ability* (App. 91). (Emphasis supplied).

The last and concluding paragraph in this same statement follows:

Again I want to say, regardless of what your decision may be in this very important matter, my personal affection for you and my constant desire to do the best I can for you will never diminish (App. 93).

It is manifest that the reference to the rest period could not possibly be interpreted as an attempt to influence improperly the employees' attitude toward the Union. It was couched in specific terms as a benefit which the employees would enjoy whether or not the Union succeeded. It appeared in a statement referring to Petitioner's past liberal labor policy and was coupled with a promise to continue the policy regardless of whether the Union succeeded or not. Under these circumstances the statement is not a violation of Section 8(a)(1) of the Act. *Peter J. Schweizer, Inc., v. N.L.R.B.*, 144 F. 2d 520, 79 U. S. App. D. C. 178 (1944).

2. Despite the fact that there is no showing that the institution of shift rotation is a benefit to employees, the Board concluded that Gilbert's statement, in response to an employee's question, concerning shift rotation was a promise in violation of Section 8(a)(1). The record reveals that shift rotation was a subject of discussion among employees long prior to the commencement of Union activities in September 1948 (App. 140). The record also shows that during this period shift rotation was not economically feasible in Petitioner's plant because the second and third shifts were operating with insufficient personnel (App. 141). The statement concerning shift rotation occurred on October 18. In response to a specific question asked Gilbert by Bessie Chapman, one of the Union leaders, Gilbert stated that whether or not the plant instituted shift rotation would be determined by the majority vote¹⁷ of the em-

¹⁷ This vote is not to be confused with the vote at the Board election. The record is clear that Petitioner advised the employees that it would be guided by the desire of the majority of the employees with respect to shift rotation, without any reference to whether the Union succeeded or not (App. 115).

ployees. (App. 115). In fact, such a vote was had several months after the election of October 19 when Petitioner had built up a full complement of workers on the second and third shifts (App. 141).

Viewed even apart from any background, it is difficult to conceive how Petitioner's statement that the plant would be guided by the desires of the majority of its employees with respect to shift rotation is in violation of Section 8(a)(1). This is particularly true since the statement was made in response to a direct question of an employee. In any event, if the statement is viewed against the background of Petitioner's prior liberal labor policy and its repeated statements that it would do the best it could for employees regardless of whether or not the Union came in, it clearly qualifies as privileged under the Act. *Peter J. Schweitzer, Inc., v. N.L.R.B.*, 144 F. 2d 520, 79 U. S. App. D. C. 178 (1944).

III. Counsel's Prehearing Inquiries Among Petitioner's Employees Did Not Violate Section 8(a)(1) of the Act Because They Were Pertinent to the Allegations of the Complaint and Necessary to Enable Counsel to Prepare an Adequate Defense.

The circumstances under which Petitioner's counsel submitted a prepared questionnaire to Petitioner's employees to ascertain information necessary to prepare an adequate defense to the complaint have been detailed in the Statement section of this brief.¹⁸ Despite these circumstances, the Board concluded that the asking of Questions 7, 8, 9, 10, 13, 14, 21, and 25 of the questionnaire constituted interference, restraint and coercion in violation of Section 8(a)(1) of the Act (App. 61).

It is well established by the Board's own decisions and conceded by the Board in this case that "an employer is privileged to interview employees for the purpose of dis-

¹⁸ App. 164-166; pp. 12-14, *supra*.

covering facts within the limits of the issues raised by a complaint, where the employer or its counsel does so for the purpose of preparing its case for trial and does not go beyond the necessities of such preparations . . ." (App. 59). *May Department Stores Co.*, 70 N.L.R.B. 94 (1946); *N. & W. Overall Co., Inc.*, 51 N.L.R.B. 1016 (1943). It is very clear that in the instant case Petitioner's counsel did not go beyond the proper scope in preparing its defense. The Board concedes "that the allegations of the complaint herein are along broad and general lines and that respondent's counsel was unable to procure from the Regional Director a voluntary particularization thereof." (App. 59). Although counsel's formal motion for a more definite statement of facts, which was referred by the Regional Director to the Trial Examiner, was granted in part, the requested information was not furnished Petitioner until *the start of the hearing* (App. 164). (Emphasis supplied).

The scope of preparation of a defense to a complaint is necessarily subject to and limited by the extent and character of the allegations of the complaint. Even in the case of a complaint with specific allegations, counsel's obligation to prepare a case thoroughly requires extensive investigation and interviews of witnesses, not only to ascertain all material facts bearing on the issues, but also facts relating to issues of credibility, bias, and interest of both its own and opposing witnesses and facts leading to relevant evidence.¹⁹ Where, as in the instant case the allegations of the complaint are vague and so broad as to be all-embracing, Petitioner's counsel obviously required great latitude in preparing its defense. This is particularly true since background material, not part of the issues in a complaint, has always been regarded as significant by the Board and the Courts in unfair labor practice cases. Cf. *N.L.R.B. v. Trojan Powder Co.*, 135 F. 2d 337 (3rd Cir. 1943).

¹⁹ The propriety of interviewing witnesses or prospective witnesses for the opposing side under the circumstances present in this case is clearly sustained by Canon 39 of the Canons of Ethics of the American Bar Association.

In the instant case, each of the inquiries which the Board held in violation of Section 8 (a)(1) of the Act was pertinent to an allegation in the complaint. Thus, Questions 7 and 8 relating to the purpose of the signing of cards and their effect were justified by the necessities of preparing a defense to Paragraph VI of the complaint, which alleged that a majority of the employees had designated the Union as its collective bargaining representative on September 16, 1948 (App. 5, 6). Clearly Petitioner was entitled to ascertain the method of such designation, and if, indeed, the Union was designated at all.²⁰ These inquiries were particularly appropriate here in view of the fact that the original concerted activity was a sympathetic effort of the employees to compel Petitioner to protect Zim Byrd's job as shift foreman. It was quite reasonable to assume that many employees who signed cards did so for the sole purpose of supporting Byrd and thereafter terminated their interest in any group activity. In fact, the Trial Examiner found that "Indeed, the respondent might have assumed from the conference on the night of the 19th, and the return to work on Monday, that it had adjusted the employee grievances and that the employees had abandoned their efforts to organize a union." (App. 32).

Questions 9 and 10, relating to membership dues and fees, were designed to ascertain accurately whether evidence other than cards were to be utilized in establishing the Union's designation as bargaining agent. This information was certainly pertinent to the allegation of the complaint that the Union had been designated as bargaining agent by a majority of employees. Although neither membership in nor payment of dues and fees is determinative of statutory authorization,²¹ certainly these factors are evidence of such statutory authorization or lack of it. *Pure Oil Co.*, 62 N.L.R.B. 1039 (1945).

²⁰ Although Petitioner was aware that some cards had been signed as a result of its September 30th conference with Jacobs and Patterson, it was unaware of the number of cards signed and the content of such cards until they were introduced into evidence at the hearing.

²¹ *N.L.R.B. v. Consolidated Machine Tool Corporation*, 163 F. 2d 376 (2nd Cir. 1947), cert. den. 332 U.S. 824.

The Board found that Questions 7 and 8 were not pertinent to the issues because the subjective state of mind of the employees at the time he signs a card cannot overcome his overt act in having signed an application card. Similarly, it found that Questions 9 and 10 sought evidence extraneous to the issues because the signing of an application card gives the Union authority to bargain regardless of whether the signer is a member of the Union or pays dues. (App. 61). Based upon these premises the Board thereupon concluded that these four questions were *per se* violations of Section 8(a)(1).²² This reasoning is clearly erroneous. The Board's conclusion assumes that Petitioner was aware that each of the cards signed was a membership application card. Actually, Petitioner's counsel was trying to ascertain whether, in fact, the cards were application or membership cards or whether other means of designation had been used. Further, the Board's conclusion, if correct, would preclude Petitioner from investigating facts to ascertain whether fraud was practiced by the Union to induce the employees to execute the cards. Obviously the presence of fraud in the execution of the designation would constitute an appropriate defense to a Union claim that it represented a majority of the employees.

Questions 13 and 14 of the questionnaire, inquiring as to whether the employees terminated their connection with the Union at any time after signing the cards, were appropriate in the light of Paragraph VII of the complaint which alleged that the Union had a continuing majority even at a date subsequent to the election which it had lost by a substantial margin. The information sought was necessary to answer this allegation and the further allegation that Petitioner had continued to refuse to bargain with the Union up to the date of the complaint (February 24, 1949). Clearly, if a majority of the employees had designated the

²² It certainly cannot be denied that the information sought by these questions would have a bearing on whether or not the Union was authorized as a bargaining agent.

Union for the sole purpose of protesting Petitioner's actions with respect to Zim Byrd and thereafter quit the Union, Petitioner would certainly be entitled to invoke such facts as a defense to the Union's claim of a continuing majority. The presumption that the majority status of a designated bargaining agent continues until the contrary is shown²³ does not affect counsel's right to make these inquiries, because there was no evidence that counsel was aware that the Union had a majority until the cards were introduced at the hearing. In any event petitioner was entitled to seek evidence enabling it to rebut the presumption.

The Board found that Questions 21 and 25 of the questionnaire, inquiring whether the employee was unduly influenced by Petitioner in voting at the election and whether the employee considered that Petitioner's prepared statements contained threats or promises, were violations of Section 8(a)(1) because they sought evidence extraneous to the issues. It can hardly be seriously contended that the effect upon employees of statements made by an employer is not a relevant factor in determining the legal effect of said statements. Conceding, *arguendo*, that these inquiries are not pertinent to the issues, either directly or collaterally, nevertheless they are not violations of the Act unless they are reasonably calculated to coerce, or improperly influence. Nothing in either Question 21 or 25 can be construed to be coercive or to improperly influence the employees in any manner. It is apparent that the Board has applied an erroneous test to these questions. Its test is whether the information sought is pertinent to issues in the case, and, if not, the inquiries are *per se* violations of Section 8(a)(1). Petitioner submits that even though the information elicited by these inquiries be considered extraneous, they are not violations of Section 8(a)(1) unless there is a showing that they could reasonably be said to interfere with the free exercise of the employees' rights under the Act. Cf. *N.L.R.B. v. Ford, et al.*, 170 F. 2d 735 (6th Cir. 1948).

²³ *N.L.R.B. v. Harris-Woodson Co., Inc.*, 162 F. 2d 97 (4th Cir. 1947).

CONCLUSION

Petitioner submits that the Board's finding that Petitioner declined to recognize the Union on September 24, 1948, in bad faith is not supported by substantial evidence on the record considered as a whole. Therefore, the Board's conclusion that Petitioner refused to bargain within the meaning and in violation of Section 8(a)(5) of the Act cannot be sustained.

Petitioner further submits that the reference to employee rest periods mentioned by Gilbert during a review of Petitioner's long-standing liberal labor policy and Gilbert's response to an employee's question concerning rotation of shifts were privileged under the Act. Similarly, the investigation conducted by Petitioner's counsel in preparation for the hearing was necessary and proper, and did not constitute a violation of Section 8(a)(1) of the Act.

Therefore, Petitioner respectfully requests the Court to set aside the Board's Order and issue directions to dismiss the complaint insofar as it alleges that Petitioner violated Section 8(a)(5) of the Act. Petitioner further requests this Court to set aside the Board's Order and issue directions to dismiss the complaint insofar as it alleges that Petitioner, through its president, S. C. Gilbert, and its counsel, engaged in acts constituting violations of Section 8(a)(1) of the Act.

Respectfully submitted,

HENRY J. FOX,
JAMES F. KENNEY,
1002 Ring Building,
Washington 6, D. C.
Attorneys for Petitioner

Of Counsel:

POSNER, BERGE, FOX AND ARENT
1002 Ring Building
Washington 6, D. C.

Dated:

December 20, 1949.

APPENDIX OF STATUTES**Labor Management Relations Act, 1947****DEFINITIONS****SEC. 2. When used in this Act—**

* * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * *

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

REPRESENTATIVES AND ELECTIONS**SEC. 9**

(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to

rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: *Provided further*, That the bargaining representative has been given opportunity to be present as such adjustment.

* * *

(c)(1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—

(A) by an employee or a group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a) or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a); or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a); the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

ENFORCEMENT AND REVIEW OF BOARD ORDER

SEC. 10

* * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its members, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which

findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

No. 10433

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOY SILK MILLS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

ON PETITION FOR REVIEW AND ON REQUEST FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

DAVID P. FINDLING,
Associate General Counsel.

A. NORMAN SOMERS,
Assistant General Counsel.

BERNARD DUNAU,
LEONARD S. KIMMELL,
Attorneys,
National Labor Relations Board.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10433

JOY SILK MILLS, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

*ON PETITION FOR REVIEW AND ON REQUEST FOR ENFORCEMENT
OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD*

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

COUNTERSTATEMENT OF THE CASE

I. The Board's findings of fact and conclusions of law

This case is before the Court upon the petition of Joy Silk Mills, Inc. (R. 71), to review and set aside on order of the National Labor Relations Board issued against petitioner (R. 9), pursuant to Section 10 (c) of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. Supp. II, Secs. 151, *et seq.*), herein referred to as the Act. In its answer to the petition the Board has requested that its order be enforced (R. 75). This Court has jurisdiction under Sections 10 (e) and (f) of the Act, as amended.¹

¹ In the course of its business during the year of 1948, the company purchased raw materials all of which were obtained from points outside the State of South Carolina, and also shipped all of its finished products to points outside of the State. In its answer to the complaint, the company conceded that it is engaged in commerce within the meaning of the Act (R. 8) ; accordingly, no jurisdictional question is presented.

A. The background

1. *The business of the petitioner*

During the period pertinent to these proceedings, the company operated a small plant in Hartsville, South Carolina, where it engaged in the processing of yarn and thread. The normal complement of the plant was fifty to sixty production and maintenance workers, divided into three shifts. The company's managerial and supervisory representatives consisted of C. S. Gilbert, president; H. P. Southerland, general manager; Raymond Russell, plant superintendent; K. P. (Fred) Carpenter, held out by the company to be part of its managerial staff; Elsie Clyde McCaskell, forelady; and Wallace Cassidy, foreman (R. 19, 39).

2. *The election of 1946*

The first labor-union activity which the company experienced occurred in the fall of 1946, when the United Textile Workers of America, A. F. L., herein called the Union, conducted an organizational campaign among the company's employees, culminating in an election in which the Union failed to secure a majority. Further organizational attempts were thereafter suspended until the events occurred with which we are herein concerned (R. 102, 127).

B. The beginning of concerted activities

1. *The Zim Byrd incident*

Zim Byrd was employed as head foreman and performed the usual supervisory functions. The company sustained some decrease in business and, believing that a more experienced man could turn out an improved product and thereby regain lost accounts, hired Raymond Russell in the capacity of superintendent. Since the duties of Russell and Byrd now overlapped, Byrd was given a month's leave of absence with pay, to enable him to seek another post (R. 140). However, under the impression that Byrd had been irrevocably discharged, the employees of the first shift, on September 15, 1948, asked President Gilbert to reinstate Byrd. This request was denied. As a

result that night these and other employees initiated the formation of a local of the Union (R. 20; St. 154).²

2. The signing of the union cards

As one of the leaders in the organization of the Union, Employee Helen B. Watson obtained a supply of union cards from a labor official in a neighboring plant and signed up several employees at their homes. Additional cards were signed outside the plant upon the arrival and departure of workers during the changing of the shifts (ST. 154). This activity was observed by E. C. McCaskell, forelady, and agent Carpenter, and, although McCaskell remained silent, Carpenter ordered the organizers to cease what he assumed were attempts to hinder employees from reporting for the night shift (ST. 156). The Board found that through Carpenter the company at this time acquired knowledge of the existence of an organizational campaign (R. 24).

3. The walk-out

On September 16, 1948, the day following the company's refusal to reinstate Byrd, the employees failed to report for work, congregating instead outside the mill in protest against the company's stand. At approximately 9:30 or 10 o'clock, President Gilbert requested several of them to confer with him in his office (ST. 154). During the ensuing discussion the employees renewed their demand for Byrd's reinstatement. They also requested the grant of paid vacations. Denying both requests at first, Gilbert later acceded to the demand for vacations with pay. Finally, in order to induce the employees to return to work, Gilbert promised them that if they would resume work at once no deduction in wages would be made for the time already lost during the walk-out. Because the employees "did not know whether he would stick to his promise about vacations

² "R" refers to the joint appendix. Where the reference "ST." occurs, it refers to the stipulation entered into by the parties, reprinted at pp. 152 to 166 of the joint appendix, by which it was agreed that certain facts found by the Trial Examiner and adopted by the Board are admitted for the purposes of review in this Court. Where, in a series of references, a semicolon appears, the references preceding the semicolon are to the Board's findings, the succeeding references are to the supporting evidence or to the stipulation.

or not" (R. 114), they continued to stay out for the remainder of that day and the two following days. Work was resumed on Monday, September 20. During this time, 38 out of the company's 52 employees signed membership cards which authorized the Union to bargain collectively for them (ST. 154).

C. The rejection of the Union's request to bargain by insistence upon an election

The signed membership cards were transmitted to Earle Britton, state president of the A. F. of L., who referred them to Joseph Jacobs, southern director of the Union, on September 19 (ST. 155). Jacobs instructed Britton to communicate with the company in order to demand recognition and to inaugurate bargaining (R. 26; 102). Britton thereupon sent a letter to President Gilbert which stated that more than 30 percent of the employees had signed membership cards and that therefore the Union was proceeding to petition the National Labor Relations Board for an election (R. 82). When Jacobs received a copy of this letter on the 23rd, he recognized that it failed to include a clear demand to bargain "in terms required by the Board" (R. 26; 108).

The following morning, September 24, 1948, in order to perfect the demand to bargain, Jacobs personally telephoned Gilbert long distance and asked him to "recognize us as collective bargaining agent for production and maintenance employees at the plant because we had been authorized to represent them" (R. 27; 102). Gilbert refused Jacob's request for recognition, stating that in his opinion the Union's loss of the 1946 election settled the matter. Jacobs explained that two years having elapsed a new election is not precluded, and, in any event, since the Union presently represented a majority of the employees, it was within its rights to request collective bargaining now. As a means of substantiating the Union's majority status Jacobs proposed that the signed union cards be cross-checked against the company's pay roll by an impartial person. Upon rejection of that method, Jacobs further suggested that a consent election be held. That too was rejected by Gilbert. He insisted that any election be conducted only after all formal Board processes had run their course. The conversation closed

with Jacobs' statement that he would file an election petition with the Board (R. 27; 102, 103).

Immediately following this telephone conversation, Jacobs filed a representation petition with the Board which stated among its allegations that the Union had "notified the employer of claim that a question concerning representation has arisen" and that "the employer failed to recognize" the Union (R. 27; Tr. 818).³ Gilbert was informed of this action by a long-distance call later that same day from Mark Patterson, Field Examiner of the Board's Regional Office in Atlanta. Patterson asked whether Gilbert would agree to a consent election, but the latter preferred to consult his attorney before committing himself (R. 27; 123).

Field Examiner Patterson, in an effort to arrange a consent election, convened a meeting in the company's office on September 30, at which Manager Southerland and Henry J. Fox, attorney, represented the company, and Joseph Jacobs appeared for the Union (R. 28; 106, 144). Jacobs again asked for a cross-check but Fox declined the suggestion. However, tentative agreement was reached to hold a consent election subject to the company's ascertainment that its operations affect commerce so as to subject it to the Board's jurisdiction. Toward the close of the conference, Jacobs declared, "Of course, we could obviate all of this if we would sit down and get a contract," to which no reply was made (R. 28; 111). Thereafter, on October 7, 1948, upon receipt of advice of counsel that the company was subject to the Board's jurisdiction, a consent election agreement was entered into providing for the holding of an election on October 19 (R. 29; 106).

D. The Company, by coercive conduct, destroys the utility of the election as a means of substantiating the Union's majority, and thereby reveals that its insistence thereon was motivated by a desire to evade all bargaining

Beginning on October 12, within a week preceding the election which had been agreed upon only five days before, and continuing through the election, the company embarked upon a coercive course of conduct designed to make a free election

³ The petition is contained in the transcript of record certified to the Court at p. 818, but not reprinted in the joint appendix.

impossible. Its conduct revealed that its rejection of the Union's request to bargain and its insistence upon an election were designed to gain time within which to undermine the Union's majority. The events may be briefly summarized as follows:

1. *The promises of favor made by President Gilbert to the assembled employees*

Before the employees' organizational activity began, the company did not provide the employees with any rest period during which they could eat their lunch (R. 101, Tr. 88). Furthermore, although the employees had long been seeking such an arrangement, there was no system of shift rotation in the plant by which the swing and night shift employees would have an opportunity to work on the day shift at regular intervals, and its absence was responsible for employee dissatisfaction (R. 140, 141, 151). On October 12, the company assembled its employees on company time to hear a lengthy anti-union speech prepared by President Gilbert and read on his behalf by K. F. (Fred) Carpenter, the company's bookkeeper, timekeeper, and one-man office force (R. 87-93, ST. 158). Carpenter was held out by the company "to its employees as its agent, and indeed as a part of its managerial staff," and in its brief (p. 29) the company does not contest⁴ the Board's finding that "to the extent that [Carpenter's] acts and statements are of a coercive nature they are attributable to the company" (R. 39). In that speech Gilbert disparaged the need for a union, and for the first time he pledged that "as soon as equipment for the canteen * * * arrives, you will be given a rest period so that you may eat your lunches and relax in comfort during your shift" (R. 51; 91). Within less than a week of the first speech, on October 18, the day before the election, Carpenter delivered a second anti-union speech prepared by Gilbert similar in tenor to the first one (R. 93-100). This speech furnished the occasion for Gilbert's promise to remove the employees' dissatisfaction over the lack of shift rota-

⁴ Indeed, upon the stipulated facts (R. 36-39; ST. 153-154, 156, 158-159, 161-162), such a contest would be futile. *I. A. M. v. N. L. R. B.*, 311 U. S. 72, 80, aff'g 71 App. D. C. 175, 110 F. 2d 29 (C. A. D. C.).

tion, for following the speech, employee Bessie Chapman asked Gilbert whether he contemplated instituting a system of shift rotation. Gilbert agreed to this action if desired by a majority of the employees (R. 115). This promise was reaffirmed by Superintendent Russell in a conversation with another employee, Vonceil Hollomon, some days later (R. 35; Tr. 501).

The Board concluded that these "promises of benefit because of their significant timing, were calculated directly to affect the decision of the employees on the issue of union representation," and were proscribed by Section 8 (a) (1) of the Act because they constituted a use of economic power "*for the purpose of causing the employees to accept or reject a representative for collective bargaining*" (R. 52).

2. The coercive activity directed to individual employees

At the same time that the company through its president sought to induce defection from the Union through promises of favor made to the employees as an assembled group, it resorted to coercive pressure directed against individual employees to realize the same end.

(a) The activities of Superintendent Russell

In his capacity as plant superintendent, Russell had close and daily contact with the employees in the mill (Tr. 493). He admittedly held anti-union views, and during the immediate preelection period he attempted to proselytize employees to his persuasion by reporting his own unsatisfactory experience as a former union member (ST. 162, 163). During the course of this activity, Superintendent Russell engaged in the following coercive conduct:

One or two days before the election, Superintendent Russell asked employee William Chapman, an oiler under his supervision, whether he had made up his mind concerning the vote he was to cast. When Chapman replied that he had, Russell "hoped that it was made up the right way." After informing Chapman that "you can't leave the union to become a foreman," Russell stated that a raise was pending for Chapman which might well be delayed or even retracted in the event of a union victory (R. 46; ST. 163). In similar fashion, a few

days before the election, Russell interrogated employee Vonceil Hollomon concerning her attendance at a union meeting held some nights previously. Russell informed Hollomon that although voting for the Union would not endanger her job, it might well imperil her designation to the first shift (R. 46; ST. 163).

On October 18, the same day that President Gilbert's anti-union speech was read to the employees and only one day before the election, Russell questioned employees Henry D. O'Neal and Gwendolyn Beasley. Russell asked O'Neal about his union sympathy, and upon learning that O'Neal had attended a union meeting the day before, he sought further information from O'Neal about the number of workers attending. O'Neal gave his estimate of the number of employees present, and Russell concluded the conversation by enjoining O'Neal to "let him know if he found out anything more." O'Neal promised he would do so. (R. 44-45; 115, 116, Tr. 242). Russell similarly approached employee Beasley at her machine and asked her how many were present at the union meeting, what the union promised, and whether the union could give the employees anything he could not (R. 45; ST. 162, 163). Finally, the very morning of the election, Russell asked employee Jean Longrie the reason for her sudden interest in the Union (R. 47; ST. 162).

Russell continued with his coercive antiunion activity even after the election. On December 21, 1948, in the course of interviewing Lois Gainey, who was an applicant for a job, he first informed her that openings existed, and then he interrogated her as to her opinion of the Union. The applicant replied that she lacked sufficient knowledge to express an opinion on this score. Shortly thereafter she was hired (R. 47; ST. 164).

The Board found that "the inquiries by Russell as to employees' interest in, views toward, and membership in the Union and as to how they intended to vote in the election; his inquiries as to union meetings and activities and his solicitation of employee assistance in obtaining such information; his implied threat that an employee would not receive a contemplated increase if the Union came in; his implied threat that if an

employee voted for the Union, she would lose her shift; and his questioning of an applicant for employment as to her union views" were coercive acts violative of Section 8 (a) (1) of the Act (R. 53, 54).

(b) The conduct of Fred Carpenter

Management representative Fred Carpenter, who read President Gilbert's antiunion speeches on October 12 and 18 (*supra*, p. 6), gave point to their tenor by engaging in coercive pressure directed against individual employees in the same fashion as did Superintendent Russell. On October 18, the day before the election and the same day as his antiunion speech, Carpenter approached employee O'Neal, as did Superintendent Russell (*supra*, p. 8), and said, "you didn't tell me which way you were going to vote, for or against the union." When O'Neal failed to answer, Carpenter at first turned away, but then he returned and asked, "you like your job?" (R. 40; ST. 160). On the same day, Carpenter, visiting employee Edna Robbins at her machine, informed her of his surprise that she was a member of the Union, considering that her father (employed by another company in town) was not a union adherent (R. 44; ST. 160).

The next day, the very morning of the election, Carpenter continued with his individualized pressure, using as his frame of reference a newspaper article written by Westbrook Pegler which was unfavorable to union leadership in general (R. 39; ST. 159). He exhibited this clipping to various employees at their machines (R. 39 and n. 24, 40, 41-42; ST. 159, 160, 161), and requested them to read it so that they could inform themselves (as Carpenter put it) "of another angle of the union question which possibly had not been presented" (ST. 160). After Jean Longrie (the employee to whom Superintendent Russell expressed surprise because of her interest in Union (*supra* p. 8) had read the Pegler article, Carpenter warned her that "if the union came in, Mr. Gilbert probably would close down the mill and we would both be out of a job" (R. 40; ST. 160). In similar vein, while employee Robert Morris was performing his job, Carpenter interrogated Morris concerning how he intended to vote. Morris replied that this matter was his

own business. Carpenter warned Morris against "going around telling people how to vote" (R. 44; ST. 160, 161).

The Board found that "the inquiries by Carpenter as to how employees would vote in the election and as to their union membership, views and attitudes; his threat that Gilbert probably would close the mill if the Union came in; and his implied threat to O'Neal that his job would be affected by his vote" were coercive acts violative of Section 8 (a) (1) of the Act (R. 53).

4. *The Board's conclusion that the company refused to bargain collectively*

In the election held as scheduled on October 19, the Union failed to secure a majority by a vote of 16 to 32 (R. 21; ST. 155).⁵ The Board found, however, that the company, by its "acts of interference and coercion," had "made a free election impossible" (R. 11). The Board further concluded that this coercive course of conduct demonstrated that the company's insistence upon an election was not motivated by a good faith doubt of the Union's majority, but, on the contrary, "the real reason the [company] rejected the Union's request on September 24 was to gain time within which to undermine the Union's support" (R. 12). It is stipulated that the Union was designated as exclusive representative by a majority of the employees on September 16, 1948 (ST. 154, 156), and the Board found that "to the extent the election showed a defection in the Union's support, such defection was attributable to the [company's] unfair labor practices and is therefore not a bar to a remedial order in this case." (R. 55). Accordingly, the Board held that "a refusal took place on September 24, and from that time on, the respondent refused to bargain collectively within the meaning of Section 8 (a) (5) of the Act as amended" (R. 12).

⁵ Objections to the conduct affecting the outcome of the election were filed by the Union, and subsequently upheld by the Regional Director who ordered the election set aside. Thereafter, the Union with the approval of the Regional Director withdrew its election petition without prejudice (R. 21; ST. 155), and on October 29 filed an unfair labor practice charge against the company (R. 16).

E. The pre-hearing questionnaire

Counsel for the company, on March 10 and 11, 1949, submitted a questionnaire to a substantial number of employees who had worked for the company during September and October of 1948. The inquiry was made by the company's attorney in the course of his investigation of the facts alleged in the complaint and in his preparation of the case for the hearing (ST. 164). The questionnaire, pertaining to the employees' union activity, contained 28 inquiries (R. 79-81). The Board found that eight of these questions were in violation of Section 8 (a) (1) of the Act, since they elicited information outside the scope of the issues framed by the pleadings, and thus exceeded the privilege of inquiry afforded as an aid to trial preparation (R. 61). These questions were as follows:

7. What did you consider to be the purpose of signing the card?

8. Did you consider yourself a member of the union when you signed the card?

9. At the time you signed the card, did you pay any money for membership or other fees in the union?

10. Did you agree to the future payment of any membership, initiation or other fees to the union?

13. Did you terminate your connection with the union at any time after you signed a card?

14. If so, for what reason did you terminate your connection with the union?

21. Did you cast your vote at the election solely according to your own personal views concerning whether you desired the union to represent you and without any fear or threats as to your job and future with the company, and without being influenced in any respect by promises of future benefits by the company?

25. Did you consider that those speeches or the statements and notices posted on the bulletin board were threats or promises of benefits to influence your vote against the union?

II. The Board's order

The Board's order requires the company to cease and desist from refusing to bargain collectively with the Union, and in any other manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by Section 7 of the Act (R. 13). Affirmatively, the Board's order requires the company to bargain with the Union upon request and to post appropriate notices (R. 13).

SUMMARY OF ARGUMENT

The coercive conduct engaged in by the company before the election fully warrants the Board's conclusion that the company's rejection of the Union's request to bargain and its insistence upon an election was designed to gain time within which to dissipate the Union's majority. The Board could reasonably conclude that an employer's expression of doubt as to a Union's majority status is not made in good faith when, during the time he gained by making such assertion, he resorts to such patent acts of coercion as sustained interrogation of employees concerning their union activity, threats of economic reprisal should the employees persist in their organizational efforts, enlistment of an employee informer to report on union progress, and promises of economic favor designed to quell legitimate aspirations to collective bargaining. By insisting in bad faith upon an election, after a sufficient request to bargain had been made by the Union, the company engaged in a wrongful refusal to bargain. Furthermore, the Board was warranted in concluding that portions of the prehearing questionnaire submitted by the company's counsel to the employees were coercive, since they interrogated employees concerning aspects of their union activity immaterial to the issues of the case. A privilege of inquiry afforded to ready a case for trial does not entail a license to probe into union matters irrelevant to the case.

ARGUMENT

A. The Company's preelection interference, restraint, and coercion in violation of Section 8 (a) (1) of the Act

The company, by its representatives, Superintendent Russell and agent Carpenter (*supra*, pp. 7-10), interrogated employees

concerning their union activity, threatened employees with economic reprisals if the Union were successful in its campaign, and solicited an employee to report on the progress of union activity.

The stipulated facts show that Superintendent Russell interrogated employees O'Neal, Longrie, and applicant for employment Gainey regarding their union views, sympathies, and interests in the Union (*supra*, p. 8). Employees Hollomon and Beasley, as well as O'Neal, were also questioned about the attendance and proceedings at a union meeting and the latter was induced to render reports of subsequent union meetings (*supra*, pp. 7-8). Russell attempted to learn how Employee Chapman planned to vote, and the latter was also threatened with a denial of a pending increase in pay should the Union's campaign be successful (*supra*, p. 7). Employee Hollomon was similarly coerced when informed that a union victory would probably necessitate a transfer to a less favorable shift (*supra*, p. 8).

The stipulated facts also show that management representative Carpenter interrogated employees Morris and O'Neal as to how they intended to vote, and, when the latter failed to respond, he was threatened with discharge when he was meaningfully asked, "You like your job?" (*supra*, pp. 9-10). Employee Longrie was warned of the probability of the mill closing down if the Union were certified (*supra*, p. 9). Finally, Employee Robbins was interrogated concerning her attitude toward the Union (*supra*, p. 9).

"The combination of facts just recited fits into a legal pattern already well marked out by an abundance of authority in the labor field." ⁶ Apart from attempting to minimize its significance (Co. Br., p. 29), the company does not dispute the fact that its conduct infringed upon the employees' right to uncoerced self-organization. The gravity of its infraction is apparent upon analysis.

As to interrogation, the Board has recently restated the basic rationale rendering interrogation of an employee concerning

⁶*N. L. R. B. v. O'Keefe and Merritt Mfg. Co.*, 25 L. R. R. M. 2126, 2129 (C. A. 9., December 2, 1949).

his union activity violative of Section 8 (a) (1). *Matter of Standard Coosa-Thatcher Co.*, 85 N. L. R. B. No. 224, 24 L. R. R. M. 1575. The gravamen of the activity proscribed by Section 8 (a) (1) is the impingement upon the right guaranteed employees by Section 7 to organize, associate, and bargain collectively. In these matters a right of privacy is accorded employees protected from all interference. Interrogation of the employee as to union matters invades this privacy and is condemned as an unlawful intrusion upon the enjoyment of the rights secured him by the Act. Such interrogation induces in the questioned employee a reasonable belief that the employer's purpose in securing the information is to enable him to visit reprisals, once the intelligence is obtained. In effect, he is also cautioned to forsake any contemplated union activity or risk loss of his job. As the Board stated, "Our experience demonstrates that the fear of subsequent discrimination which interrogation instills in the minds of employees is reasonable and well-grounded. The cases in which interrogated employees have been discharged or otherwise discriminated against on the basis of information obtained through interrogation are numerous.⁷ These cases demonstrate that, by and large, employers who engage in this practice are not motivated by idle curiosity, but rather by a desire to rid themselves of union adherents." Based upon these considerations, "questioning employees concerning their labor sympathies,"⁸ including inquiries directed to applicants for employment,⁹ have been uni-

⁷ Citing *Ford Products*, 73 N. L. R. B. 49, enforced 170 F. 2d 735 (C. A. 6); *Texas Miller Products, Inc.*, 83 N. L. R. B. No. 93.

⁸ *Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518.

⁹ The applicant for employment would in all likelihood be even more coerced than those already hired, because the former could but infer that obtaining the job depends on an answer acceptable to the employer. He is also immediately apprised of the employer's antagonism toward unions, and that if hired, union activity will run him afoul of management policies. See *N. L. R. B. v. Cities Service Oil Co.*, 129 F. 2d 933, 934 (C. A. 2); *N. L. R. B. v. Clarksburg Publishing Co.*, 120 F. 2d 976, 979 (C. A. 4).

formly condemned,¹⁰ as the most recent of such cases makes plain.¹¹

As to threats of economic reprisal, where, as here, the employer because of union activity threatens to close the mill,¹² to discharge a pro-union employee,¹³ to withhold a proposed pay increase, and to transfer an employee to a less favorable shift,¹⁴ he engages in an interdicted use of economic power to compel defection from the union. Finally, an employer's solicitation of an employee to report back to him as to what takes place at union meetings is clearly within the ban of Section 8 (a) (1) of the Act.¹⁵

As counterpoint to its interference, restraint, and coercion through interrogation, economic reprisal, and enlistment of an employee informer, the company promised the grant of economic benefits to thwart the Union's advent. On the occasion of the October 12 statement to the employees, the company promised that "as soon as equipment for the canteen * * * arrives, you will be given a rest period so that you may eat your lunches in comfort during your shift" (*supra*, p. 6). Contrary to the company's contention (Co. Br., p. 31), "before the occasion of the reading of the letters", there had been no "rest periods in effect at the plant" (R. 101), and the employees "ate at [their] machine, and worked while [they] were eating" (Tr. 88). [Emphasis supplied.] And following the reading of the October 18 statement, in answer to an employee's ques-

¹⁰ See, e. g., *N. L. R. B. v. Arcade-Sunshine Co.*, 73 App. D. C. 128, 118 F. 2d 49, 50, cert. den. 313 U. S. 567; *Texarkana Bus Co. v. N. L. R. B.*, 119 F. 2d 480, 483 (C. A. 8); *N. L. R. B. v. Brown Paper Mill Co., Inc.*, 133 F. 2d 988, 989 (C. A. 5); *N. L. R. B. v. A. L. Abell Co.*, 97 F. 2d 951, 955, (C. A. 4); *N. L. R. B. v. Maynard K. Van Deusen*, 138 F. 2d 893, 895 (C. A. 2).

¹¹ *N. L. R. B. v. Minnesota Mining and Mfg. Co.*, 25 L. R. R. M. 2262, 2264 (C. A. 8, January 16, 1950); *N. L. R. B. v. LaSalle Steel Co.*, 25 L. R. R. M. 2152 (C. A. 7, December 9, 1949); *N. L. R. B. v. National Plastics Products Co.*, 175 F. 2d 755, 760 (C. A. 4); *N. L. R. B. v. Scirell Mfg. Co.*, 172 F. 2d 459, 460-461 (C. A. 5).

¹² *I. A. M. v. N. L. R. B.*, 110 F. 2d 29, 39, 71 App. D. C. 175, affirmed 311 U. S. 72.

¹³ *N. L. R. B. v. Arcade-Sunshine Co.*, *supra*.

¹⁴ *Heinz Co. v. N. L. R. B.* *supra*.

¹⁵ *Agwilines, Inc. v. N. L. R. B.*, 87 F. 2d 146, 152 (C. A. 5); *N. L. R. B. v. Jahn & Ollier Engr. Co.*, 123 F. 2d 589, 591 (C. A. 7).

tion, President Gilbert promised the institution of a system of shift rotation by which the employees on the night and swing shifts would have an opportunity to work on the day shift at regular intervals (*supra*, pp. 6-7). Contrary to the company's contention (Co. Br., p. 33), this was a definite benefit to the employees, which they had long been seeking, because it enabled them to "have a little entertainment in the evening" (R. 140). The Board found that these promises of benefit, because of their significant timing in the midst of a union campaign, were made for the purpose of inducing the employees' to repudiate the union in the election (R. 51).

Because the "action of employees with respect to the choice of their bargaining agents may be induced by favors bestowed by the employer as well as by his threats or domination,"¹⁶ the employer's promise of economic benefits to defeat employees' organizational activity is a forbidden resort to economic power when its objective is to show "its employees that resort to self-organization was plainly unnecessary."¹⁷ Such promises of economic benefits, "employed to stem a tide of organization,"¹⁸ have been uniformly recognized to be restrictive of free employee choice.¹⁹

Its proscription has been codified by the amendments to the Act which exclude a "promise of benefit" from the protection which Section 8 (c) extends to expression of views, arguments,

¹⁶ *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678, 685-686; see also, *Western Cartridge Co. v. N. L. R. B.*, 134 F. 2d 240, 244 (C. A. 7) ("Interference is no less interference because it is accomplished through allurements rather than coercion").

¹⁷ *N. L. R. B. v. Crown Can Company*, 138 F. 2d 263, 266 (C. A. 8).

¹⁸ *Western Cartridge Co. v. N. L. R. B.*, 134 F. 2d 240, 244 (C. A. 7).

¹⁹ See, e. g., Immediate acceptance of all the outstanding grievances and suggested changes by employees, *N. L. R. B. v. Superior Tanning Co.*, 117 F. 2d 881, 885-8 (C. A. 7), cert. den. 313 U. S. 559; announcement of a stock purchase plan, *N. L. R. B. v. Vincennes Steel Corp.*, 117 F. 2d 169, 172 (C. A. 7); relinquishment of requirement of compulsory overtime, and promise of future extra payment for such work, *F. W. Woolworth Co. v. N. L. R. B.*, 121 F. 2d 658, 660 (C. A. 2); implementation of a profit sharing contract on very day consent election agreed upon, *N. L. R. B. v. Jahn & Ollier Engraving Co.*, 123 F. 2d 589, 593 (C. A. 7); offer of a wage increase 5 days after receiving a union request for bargaining, *N. L. R. B. v. Crown Can Co.*, 138 F. 2d 263, 266, (C. A. 8), cert. den. 321 U. S. 769; vacation plan and wage increase, *N. L. R. B. v. Gate City Cotton Mills*, 167 F. 2d 647 (C. A. 5).

or opinion. While the mere existence of organizational activity among the employees does not preclude the employer from instituting beneficial changes in the employment relationship so long as those changes are dissociated from a purpose to induce the employees to refrain from unionization,²⁰ where, as here, that purpose exists, the vice of the promises is not neutralized, as the employer would have it be (Co. Br., p. 33), merely because the company states that the promise will be kept even if the union is successful. Indeed, in view of the coercive pressure the company was otherwise exerting to compel abandonment of unionization, which was bound to make the employees dubious of the company's intentions, such an assurance could reasonably be construed as a strategic device to impress upon the employees that the company's promises would be performed without reservation, in order thereby to impart substance to the company's attempt to show the employees that resort to collective bargaining was superfluous to their welfare. It does not negate the vice of the conduct which rests on the use of economic power designed to quell the union or organizational campaign by "promises of better things to come,"²¹ an expression of beneficence not forthcoming until necessary to forestall collective bargaining. *N. L. R. B. v. Electric City Dyeing Co.*, 25 L. R. R. M. 2234, 2235 (C. A. 3, January 11, 1950).

B. The company's refusal to bargain in violation of Section 8 (a) (5) of the Act

1. The Company's insistence upon a consent election was not in good faith

In ascertaining whether the company's refusal to bargain was justified, the Board stated the applicable standard of law to be (R. 11):

That an employer may in good faith insist on a Board election as proof of the Union's majority but that it unlawfully refuses to bargain if its insistence on such an election is motivated, not by any bona fide doubt as to

²⁰ *Hudson Hosiery Co.*, 72 N. L. R. B. 1434, 1437.

²¹ *Hudson Hosiery Co.*, 72 N. L. R. B. 1434, 1436.

the Union's majority, but rather by a rejection of the collective bargaining principle or by a desire to gain time within which to undermine the Union.

This standard of law, the soundness of which the employer does not dispute (Co. Br. 24), has judicial sanction, for it is uniformly recognized that an employer's demand for proof of a union's majority must be motivated by an honest doubt concerning its existence rather than by a desire to secure time during which to subvert the Union's majority.²²

The Board's finding that the company's insistence upon an election was motivated by a desire to use the preelection period for the purpose of undermining the Union's majority is conclusively supported by the order of events. It is stipulated that on September 16, 1948, the Union had been designated by a majority of the employees as their bargaining representative (*supra*, p. 10). In answer to the Union's request to bargain on September 24, and continuously thereafter until the execution of the consent election agreement on October 7, the company insisted upon an election to substantiate the majority claim (*supra*, pp. 4-5). Within 5 days of the entry into the agreement, and reaching its crescendo on the eve of the election, the company embarked upon a coercive course of conduct consisting of sustained interrogation, threats of economic reprisal, enlistment of an employee informer to report on union progress, and promises of benefit. These coercive infractions (*supra*, pp. 5-10), the gravity of which cannot be minimized, revealed in unmistakable clarity that the company's insistence upon an election was not sincerely motivated, but was actuated by a desire to obtain time within which to dissipate the Union's stipulated majority, an end which was accomplished when the Union lost the election.

²² *Lebanon Steel Foundry Co. v. N. L. R. B.*, 76 App. D. C. 100, 130 F. 2d 404, 409, cert. den. 317 U. S. 659; *N. L. R. B. v. Federbush Co., Inc.*, 121 F. 2d 954, 956 (C. A. 2), *N. L. R. B. v. Remington Rand, Inc.*, 94 F. 2d 862, 868 (C. A. 2), cert. den. 304 U. S. 576 and 585; *Idaho Potato Growers v. N. L. R. B.*, 144 F. 2d 295, 307 (C. A. 9), cert. den. 323 U. S. 769.

The spirit of wholesome cooperation implicit in a bona fide doubt does not find expression in the patent interference and restraint evinced here so shortly after agreeing to an election.²³ In "a field where subtleties of conduct may play no small part," the collective bargaining obligation "is not to be evaded by in-directions or formal observances which in fact defy it," and an employer may not point with unctuousness to its willingness to consent to an election when events show its use as a vehicle to frustrate the "bargaining process."²⁴ In a context strikingly similar to that presented here, the Court of Appeals for the Second Circuit held that "Whether the refusal was motivated by a genuine doubt as to the [Union's] designation by a majority of the [employees] was for the Board to decide, and the coercive conduct previously discussed supports the Board's inference that the respondent's doubt was spurious."²⁵

The company's contrary contention reduces itself to an attempt to have this Court substitute its inference from the facts for that of the Board. But it is settled law, unaffected by the amendment to the standard of review embodied in Section 10 (e) of the Act,²⁶ that so long as the inference of the Board is reasonable, it is immaterial that the facts are capable

²³ It is well recognized that subsequent acts are probative of the intent accompanying a preceding act. Wigmore, Code of Evidence, Rule 69, Art. 2 (3d Ed., 1942). In "the teeth of a denial the proof of motive must depend upon acts and circumstances which can never be conclusive and when motive is attributed to an artificial person it involves probing the intent of all the officers concerned." *N. L. R. B. v. Pacific Greyhound Lines, Inc.*, 91 F. 2d 458, 459 (C. A. 9), modified on other grounds, 303 U. S. 272. See also *F. W. Woolworth Co. v. N. L. R. B.*, 121 F. 2d 658, 660 (C. A. 2).

²⁴ See *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426, 437.

²⁵ *N. L. R. B. v. Consolidated Machine Tool Corp.*, 163 F. 2d 376, 378-379 (C. A. 2), cert. denied, 322 U. S. 824, enforcing 67 N. L. R. B. 737; see also, *Prigg Boat Works*, 69 N. L. R. B. 97, 123, enforced on this point, 172 F. 2d 948 (C. A. 5).

²⁶ *N. L. R. B. v. Crompton-Highland Mills, Inc.*, 337 U. S. 217, 220, n. 4; *Eastern Coal Corp. v. N. L. R. B.*, 176 F. 2d 131, 135 (C. A. 4); *N. L. R. B. v. Austin Co.*, 165 F. 2d 592, 595 (C. A. 7); *Victor Mfg. & Gasket Co. v. N. L. R. B.*, 174 F. 2d 867, 868 (C. A. 7); *N. L. R. B. v. Sandy Hill Iron & Brass Works*, 165 F. 2d 660, 663 (C. A. 2); *N. L. R. B. v. Continental Oil Co.*, 25 L. R. R. M. 2253, 2255-2256 (C. A. 10, January 6, 1950); *N. L. R. B. v. Universal Camera Corp.*, 25 L. R. R. M. 2256, 2258 (C. A. 2, January 10, 1950); *N. L. R. B. v. Minnesota Mining and Mfg. Co.*, 25 L. R. R. M. 2262, 2263-2264 (C. A. 8, January 16, 1950).

of disparate interpretation.²⁷ It can hardly be suggested that the Board's finding in this case does not rest upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."²⁸

But even if we assume with the company that its insistence upon an election was at its inception in good faith, its subsequent conduct betrays that during the period necessary to establish the employees' untrammelled wishes it engaged in conduct which made a free determination impossible. It is plain, therefore, upon the alternative ground stated by the trial examiner, upon whom in another context for its own purpose the company places so much reliance (Co. Br., pp. 25-27), that the company's refusal to bargain was unjustified. As explained by the trial examiner (R. 54-55):

It has been found that the union made a request for recognition and a request to bargain. It has also been found that as a condition precedent to granting these requests, respondent was entitled in good faith to insist upon the establishment of the union's majority in the manner it selected. Having consented to an election, however, as the appropriate means of satisfying its doubts, respondent was under the correlative obligation to permit and to abide by its employees' free choice of a representative as it existed at the time of the union's

²⁷ *N. L. R. B. v. Nevada Consolidated Copper Corp.*, 316 U. S. 105; *Medo Photo Supply Corp. v. N. L. R. B.*, 312 U. S. 678, 681, n. 1; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 597; *N. L. R. B. v. Falk Corp.*, 308 U. S. 453, 461; *Cardillo v. Liberty Mutual Co.*, 330, U. S. 469, 477-478.

²⁸ *Consolidated Edison Co. v. N. L. R. B.*, 305 U. S. 197, 229. The company also contends that where the Board reaches a conclusion opposed to that of the trial examiner the report of the latter has a bearing on the question of substantial support and materially detracts therefrom (Co. Br., p. 25). However, a trial examiner's report, in whatever posture, is recommendatory only, and can neither enhance nor detract from the conclusiveness of the Board's findings of fact. *N. L. R. B. v. Universal Camera Corp.*, 25 L. R. R. M. 2256, 2259-2260 (C. A. 2, January 10, 1950); *N. L. R. B. v. Security Warehouse & Cold Storage Co.*, 136 F. 2d 829, 830-831, 834 (C. A. 9); *N. L. R. B. v. Laister-Kauffman Aircraft Corp.*, 144 F. 2d 9, 16 (C. A. 8); *N. L. R. B. v. Blatt*, 143 F. 2d 268, 272, and n. 11 (C. A. 3).

request for recognition and not to attempt to defeat such choice by any form of interference, restraint, or coercion. *Matter of Prigg Boat Works*, 69 N. L. R. B. 97, 123. But respondent's acts of interference and coercion on October 12, 18, and 19, as herein found, demonstrated that whatever doubts it had previously entertained were no longer genuine, that it no longer had reason to believe the union's claim of a majority was untrue (cf. *Matter of John Deere Plow Co., of St. Louis*, 82 N. L. R. B., No. 4), and that it sought to evade its obligation to recognize and to bargain with the union.

If its good faith had continued, respondent would certainly have either refrained from such acts of interference or have notified the union that it would no longer insist on the consent election and that it was ready to bargain. For notwithstanding its initial *bona fides*, respondent could no longer be heard to say that it entertained an honest doubt as to the union's representative status after it set about the commission of acts which rendered impossible of fulfillment the very condition precedent which it had imposed, i. e., the demonstration in a free election of the union's claim of a majority. Cf. *Matter of Consolidated Machine Tool Corp'n.*, 67 N. L. R. B. 737, enf'd as modified, 163 F. 2d 376 (C. A. 2); cert. den. 322 U. S. 824.

The Union enjoyed majority status at the time the company refused to bargain with it (*supra*, p. 10). It resorted to unfair labor practices to dissipate the majority. Defection from the Union, evidenced by its loss of the election, is, as the Board found (R. 55, 12), "attributable to the [company's] unfair labor practices and is therefore not a bar to a remedial order [to bargain] in this case." In an unbroken line of decisions the Supreme Court,²⁹ this Court,³⁰ and the other Courts of Ap-

²⁹ *Frank Bros. Company v. N. L. R. B.*, 321 U. S. 702; *N. L. R. B. v. P. Lorillard Co.*, 314 U. S. 512; *I. A. M. v. N. L. R. B.*, 311 U. S. 72, 83; *N. L. R. B. v. Bradford Dyeing Assn.*, 310 U. S. 318, 339-340.

³⁰ *N. L. R. B. v. Central Dispensary and Emergency Hospital*, 79 App. D. C. 274, 145 F. 2d 852, 854, cert. denied 324 U. S. 847.

peals³¹ have held that the appropriate means to expunge the effects of a refusal to bargain is to require the employer to bargain with the union which, before the unlawfully induced defection from its ranks, was the majority choice.

2. The request to bargain

The company contends that it cannot be charged with an unlawful refusal to bargain, because the Union made no sufficient request to bargain (Co. Br., pp. 20-22). The condition precedent to the employer's obligation to bargain with the majority representative is that the Union request recognition. But there are no words of art which must be invoked to fulfill the requirement of a request (*McQuay-Norris Mfg. Co. v. N. L. R. B.* 116 F. 2d 748, 752 (C. A. 7), cert. denied, 313 U. S. 565); in this, as in other contexts, "Lawyers' formulae, formalities, and words are not needed" (*Lebanon Steel Foundry Co. v. N. L. R. B.*, 76 App. D. C. 100, 130 F. 2d 404, 407, cert. denied, 317 U. S. 659); "all that is required to put the employer in default" is that "the employees must at least have signified to [the employer] their desire to negotiate." *N. L. R. B. v. Columbian Enameling & Stamping Co.*, 306 U. S. 292, 297.³² Measured by this criterion the requirement of a request to bargain was amply met in this case.³³

The Board found that "the telephone call from [Union Representative] Jacobs to [Company President] Gilbert con-

³¹ *E. g.*, *N. L. R. B. v. Swift & Co.*, 162 F. 2d 575, 582-585 (C. A. 3), cert. denied, 332 U. S. 791; *N. L. R. B. v. Andrew Jergens Co.*, 175 F. 2d 130, 135, (C. A. 9); *N. L. R. B. v. Todd Co.*, 173 F. 2d 705, 707 (C. A. 2); *N. L. R. B. v. Arnolt Motor Co.*, 173 F. 2d 597, 599 (C. A. 7); *N. L. R. B. v. Norfolk Shipbuilding & D. Co.*, 172 F. 2d 813, 816, (C. A. 4).

³² The court, however, in the *Columbian* case found no refusal to bargain since the only offer came from two conciliators of the Department of Labor who were unconnected with the Union and devoid of authority to act in its behalf.

³³ Nothing in *N. L. R. B. v. Burke Machine Tool Co.*, 133 F. 2d 618, 620 (C. A. 6), nor in *N. L. R. B. v. Sands Mfg. Co.*, 306 U. S. 332, 343-344, upon which the company relies (Co. Br., p. 20), even remotely supports its contention that no proper demand was made. In *Burke*, the union representative admitted that "he did not ask [the employer] to bargain with the union" and in *Sands* there was in fact no request to bargain of any kind. Cf., *N. L. R. B. v. Crompton-Highland Mills, Inc.*, 337 U. S. 217, 223-224.

stituted a request to bargain" (R. 10, n. 3). Jacobs stated to Gilbert, in his long distance call on September 24, 1948, that he was telephoning him "to see whether he would recognize us as collective bargaining agent for production and maintenance employees at the plant, because we had been authorized to represent them" (R. 102; *supra*, p. 4). It is difficult to understand how much clearer a request to bargain need be than a demand for recognition made by a person authorized to represent the employees. Moreover, the context of events supports its manifest meaning (*supra*, pp. 4-5). Jacobs' object in making this call was to request bargaining. It was made with the express purpose of correcting a deficient request for recognition contained in Union Representative Britton's letter to the employer, mailed 4 days earlier. In that letter Britton had merely stated, contrary to Jacobs' previous instruction to him to request bargaining, that he represented more than 30 percent of the employees and was proceeding to petition the Board for an election. It is inconceivable that Jacobs, an experienced union official in possession of a majority of membership cards containing express bargaining authority (*supra*, p. 4), would have troubled to make a long distance call merely to repeat the request for an election contained in the letter, and not, as is normal, to request recognition as bargaining representative. It is equally inconceivable that Gilbert, who was not unfamiliar with such matters (*supra*, p. 2), did not recognize that present institution of bargaining was being requested by the telephone call. Gilbert's subsequent dickering with Jacobs concerning the means by which to substantiate the Union's majority claim, which came after he rejected the request to bargain and insisted upon formal Board process to confirm the majority, was merely ancillary to this dominant purpose.³⁴ Indeed, any doubt on this score was certainly dispelled when, during the course of the September 30 conference at which the company insisted upon a consent election, Jacobs observed that "of course we could obviate all this if we could

³⁴ It is this fact which distinguishes *Joseph Solomon*, 84 N. L. R. B. No. 29, 24 L. R. R. M. 1225, upon which the company relies (Co. Br., p. 21), from the present case. In the *Solomon* case no more than a naked ascertainment of majority status was requested.

sit down and get a contract" (R. 111; *supra*, p. 5). Certainly the employees through their union discharged their function of having "signified to [the employer] their desire to negotiate" (*Columbian case, supra*, 306 U. S. at 297).

C. The pre-hearing questionnaire in violation of Section 8 (a) (1) of the Act

Counsel for the company on March 10 and 11, 1949, in the course of his pre-hearing preparation, submitted a questionnaire to a substantial number of the employees containing 28 questions which elicited information from them concerning their union activity during the period covered by the complaint (*supra*, p. 11). In holding eight of these questions violative of Section 8 (a) (1) of the Act, because they sought information outside the scope of the issues framed by the complaint, the Board stated the applicable standard of law to be that (R. 59):

an employer is privileged to interview employees for the purpose of discovering facts within the limits of the issues raised by a complaint, where the employer or its counsel does so for the purpose of preparing its case for trial and does not go beyond the necessities of such preparation to pry into matters of union membership, to discuss the nature or extent of union activities, to dissuade employees from joining or remaining members of a union, or otherwise to interfere with the statutory right of self organization.

Normally, as we have seen (*supra*, pp. 13-15), the interrogation of employees concerning their union activity is coercive, but a privilege of inquiry is recognized where the interview of employees is for the purpose of readying the employer's case for trial. In striking a balance between the need for protecting employees from employer intrusion on their union affairs and the need for according to the employer reasonable latitude in prehearing preparation, the Board restricts the privilege of inquiry to the matters relevant to the issues framed by the pleadings. The relevancy requirements placed upon the information allowably elicited by a litigant is grounded on a policy

which seeks to accord counsel leeway in trial preparation, but which at the same time prevents the attainment of an otherwise outlawed objective. This principle finds expression in the discovery procedure established by the Federal Rules of Civil Procedure. Rule 26 (b) provides that "the deponent may be examined regarding any matter, not privileged, which is *relevant* to the subject matter involved in the pending action."³⁵ [Emphasis supplied.] The requirements of relevancy are even more important for present purposes, because interrogation of employees as to union matters is inherently dangerous. To the employee, particularly of an employer who has already demonstrated his strong union antipathy by coercive measures (*supra*, pp. 5-10), inquiry as to union activity may be tainted with intimations of employer reprisal, which disclaimer is ineffective to dissipate, even where the inquiry is made by a representative of the employer in his capacity as counsel.

Applying the test of relevancy to the objectionable inquiries included in the questionnaire, it is clear that the burden of justification has not been borne, since the inquiries are clearly irrelevant. Question 7 through 10, held to be objectionable, ask (R. 79-80):

7. What did you consider to be the purpose of signing this card?

8. Did you consider yourself a member of the Union when you signed the card?

9. At the time you signed the card, did you pay any money for membership or other fees in the Union?

10. Did you agree to the future payment of any membership, initiation or other fees to the Union?

Questions pertaining to the signing of union authorization cards by employees are relevant to the issue whether the employees have selected a union as their bargaining agent. Accordingly, the Board held questions 5 and 6 (R. 79) which asked, "Have you ever signed any card in connection with Union

³⁵ Another instance of its application was the severe limitations imposed by the Court of Appeals for the Third Circuit upon the scope of a subpoena prayed by the employer in order to examine union records in a contempt proceeding brought by the Board, *N. L. R. B. v. Weirton Steel Co.*, 160 F. 2d 774 (C. A. 3).

activities?"; and, "What was the nature of that card?" to be permissible (R. 61, n. 32). But information beyond that elicited by these questions was irrelevant to the issue of authorization and therefore questions 7 through 10 were improper. The card, the nature of which question 6 asks be disclosed, states that (ST. 157):

the undersigned, an employee of Joy Silk Mills, Inc., hereby accept membership in the United Textile Workers of America (AFL), and authorized its representatives to bargain for me in all matters pertaining to my wages, working conditions, Union obligations, and all other conditions of employment.

The card in plain terms authorizes the Union to bargain on behalf of the employees, and the only object of Question 7, which asks, "What did you consider to be the purpose of signing the card?," is either to confirm what is plain on the face of the card or to change its legal significance. The first object is superfluous, and the second is without legal import, for the "testimony of a signer as to his subjective state of mind at the time of signing cannot operate to overcome the effect of his overt action in having signed the application card." *Consolidated Machine Tool Corp.*, 67 N. L. R. B. 737, 739, enforced, 163 F. 2d 376, cert. denied, 332 U. S. 824. And questions 8 through 10, which inquire whether the employee considered himself a member of the Union by signing, or whether he paid or agreed to pay membership and other fees, are irrelevant, for it is well-settled that neither union membership nor payment of union dues is determinative of authority to bargain.³⁶ Authority to bargain would exist whether or not the employee was a union member or paid union dues.

Questions 13 and 14 were likewise properly held to be objectionable. These are (R. 80):

³⁶ *E. g.*, *Lebanon Steel Foundry Co. v. N. L. R. B.*, 76 App. D. C. 100, 130 F. 2d 404, 406, cert. den. 317 U. S. 659; *N. L. R. B. v. Bradford Dyeing Ass'n.*, 310 U. S. 318, 339; *N. L. R. B. v. Consolidated Machine Tool Corp.*, 163 F. 2d 376, 378 (C. A. 2), cert. den. 332 U. S. 824; *N. L. R. B. v. Somerset Shoe Co.*, 111 F. 2d 681, 687 (C. A. 1).

13. Did you terminate your connection with the Union at any time after you signed a card?

14. If so, for what reason did you terminate your connection with the Union?

The only issue upon which termination of the employee's connection with the Union could be relevant is upon the question of withdrawal of bargaining authority from the Union. But withdrawal of membership from the Union by employees is not without more inconsistent with a desire to have "continued representation by the Union for as long as it would act for them." *N. L. R. B. v. National Seal Corp.*, 127 F. 2d 776, 779 (C. A. 2). Consequently the relevant question is not, "Did you terminate your connection with the Union at any time after you signed the card?" but, "Did you revoke the Union's authority to bargain for you?" The answer to this question, whether yes or no, gives to the employer all the information he needs to have on the question of the Union's authority, without the necessity for the omnibus inquiry contained in question 14, namely, "for what reason did you terminate your connection with the Union?" The latter question permits the employer to unearth much information concerning the internal affairs of the Union to which he need not be privy for the purpose of the single issue pertinent to him. In any event, since questions 13 and 14 could only go to the issue of a later revocation of a previously established bargaining authority, that issue is under any theory irrelevant to the company's justification for its refusal to bargain. If, as the company maintains, it insisted in good faith upon an election to substantiate the Union's majority, that position would be a complete defense to a refusal to bargain whether or not the Union's majority continued, at least until the question was resolved by the election. If, on the other hand, as the Board found (*supra*, p. 10), the company insisted upon an election in bad faith to gain time within which to dissipate the Union's majority, any loss of majority is without more attributable to that conduct and could not operate as a defense to a refusal to bargain. *N. L. R. B. v. Andrew Jergens Company*, 175 F. 2d 130, 134-5 (C. A. 9), cert. denied, 338 U. S. 827, and cases cited, *supra*, pp. 21-22, ns. 29-31. Consequently, on any conceivable view, questions 13 and 14 are improper.

Finally, questions 21 and 25 were properly held objectionable. These are (R. 81):

21. Did you cast your vote at the election solely according to your own personal views concerning whether you desired the Union to represent you and without any fear or threats as to your job and future with the Company, and without being influenced in any respect by promises of future benefits by the Company?

25. Did you consider that these speeches or the statements and notices posted on the bulletin board were threats or promises of benefits to influence your vote against the Union?

The only conceivable issue to which these questions could go is to show that the company's conduct did not constitute unfair labor practices because it did not actually succeed in interfering with, restraining, or coercing the employees in their choice of a bargaining representative. The proper test, however, is not the employees' subjective "recognition of constraint," for that "is a subtle thing" and "may call for a high degree of introspective perception" (*N. L. R. B. v. Donnelly Garment Co.*, 330 U. S. 219, 231, quoting with approval from *Bethlehem Shipbuilding Corp. v. N. L. R. B.*, 114 F. 2d 930, 937 (C. A. 1)). The test is whether, upon an objective appraisal of the situation, "the conclusion that their choice was restrained by the employer's interference" is "based on the existence of conditions or circumstances which the employer created or for which he was fairly responsible and as a result of which it may reasonably be inferred that the employees did not have that complete and unfettered freedom of choice which the Act contemplates" (*N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 588). Accordingly, because the proper test is whether the employer's conduct can reasonably be said to have an adverse effect on self-organization and collective bargaining, the company's attempt to "probe the precise factors of motivation which underlay each employee's choice" was improper (*ibid*). See also, *N. L. R. B. v. Ford Brothers*, 170 F. 2d 735, 738 (C. A. 6); *N. L. R. B. v. Brezner Tanning Co.*, 141 F. 2d 62, 64 (C. A. 1); *N. L. R. B. v. John Englehorn & Sons*, 134 F. 2d 553, 557 (C. A. 3); *N. L. R. B. v.*

A. S. Abell Co., 97 F. 2d 951, 955-956 (C. A. 4); *Humble Oil & Refining Co. v. N. L. R. B.*, 113 F. 2d 85, 92 (C. A. 5); *N. L. R. B. v. Illinois Tool Works*, 153 F. 2d 811, 814 (C. A. 7); *Elastic Stop Nut Corp. v. N. L. R. B.*, 142 F. 2d 371, 377 (C. A. 8), cert. denied 323 U. S. 722.

CONCLUSION

For the reasons stated it is respectfully submitted that the petition for review should be denied and the Board's order should be enforced in full.³⁷

DAVID P. FINDLING,
Associate General Counsel,
A. NORMAN SOMERS,
Assistant General Counsel,
BERNARD DUNAU,
LEONARD S. KIMMELL,
Attorneys,
National Labor Relations Board.

JANUARY 1950.

³⁷ The scope of the order, assuming the validity of the findings, was not challenged below, and is, accordingly, not here in issue. *N. L. R. B. v. Cheney California Lumber Co.*, 327 U. S. 385.

REPLY BRIEF FOR PETITIONER

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,433

JOY SILK MILLS, INC., *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

On Petition for Review of, and to Set Aside an Order of
the National Labor Relations Board.

HENRY J. FOX

JAMES F. KENNEY

1002 Ring Building

Washington, D. C.

Attorneys for Petitioner

Of Counsel:

Posner, Berge, Fox & Arent

1002 Ring Building,

Washington 6, D. C.

Dated: March 6, 1950.

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STATUTES:

National Labor Relations Act, Act of July 5, 1935, c. 372, § 1, 49 Stat. 449, 29 U. S. C. § 151, *et seq.* (1946), as amended by Labor Management Relations Act 1947, Act of June 23, 1947, c. 120, Title I, § 101, 61 Stat. 136, 29 U. S. C. § 151, *et seq.* (Supp. 1948):

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Section 8(a) (5)	6

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REPLY BRIEF FOR PETITIONER

Petitioner deems it necessary to file a reply brief to present its position on an alternative theory on the issue of refusal to bargain advanced in the Board's brief which was not treated in Petitioner's brief. Petitioner also desires to clarify certain references to stipulated facts which appear in the Board's brief.

Clarification of Facts

In two instances the Board's brief refers to stipulated facts concerning the date upon which the Union had been designated by a majority of the employees as their bargain-

ing representative (Bd. Br. 10, 18, App. 154, 156). Although the facts referred to are technically correct, the context in which they appear gives rise to a misapprehension concerning their significance. The Board's brief creates the impression that Petitioner had knowledge on September 16, 1948, that the union represented a majority of its employees. Unexplained, the stipulated facts might be construed to support that impression, and thus support the Board's position that Petitioner did not entertain a good faith doubt of the union's majority status when it refused to recognize the union on September 24.

The stipulation is merely an agreement between the Petitioner and the Board to admit certain facts found by the Trial Examiner for purposes of review in this Court (App. 152). The stipulation was not intended to and does not in fact establish that petitioner was aware that a majority of its employees had designated the union as their collective bargaining representative on September 16, 1948. Indeed, the Board itself found that although Petitioner "had knowledge of the fact, during the week of September 15, that its employees were attempting to organize a union. . . . It had no knowledge, however, of the extent to which the campaign had been successful." (App. 32). The record is clear that Petitioner had no knowledge of the union majority on either September 24 or September 30, the only dates on which the union allegedly requested recognition.

The Board's Alternative Theory on the Issue of Refusal to Bargain

The Board's brief offers a theory, originally developed by the Trial Examiner in his Intermediate Report, as an alternative argument to support its decision that Petitioner unlawfully refused to bargain. This theory, hereafter referred to as the Trial Examiner's theory, is that Petitioner did not unlawfully refuse to bargain on either September 24 or 30, the dates of the union's request, because Peti-

tioner entertained a good faith doubt as to the union's representation of a majority of its employees; but that Petitioners conduct in violation of Section 8(a)(1) of the Act which occurred on October 12, 18, and 19, "demonstrated that whatever doubts it had previously entertained were no longer genuine, that it no longer had reason to believe the union's claim of a majority was untrue . . . , and that it sought to evade its obligation to recognize and to bargain with the union." (App. 31-34, 54-55).

In the proceedings before the Board, Petitioner in its brief demonstrated that the Trial Examiner's theory was contrary to settled principles of law established by the Board's own decisions. Apparently the Board agreed with Petitioner. Its decision expressly rejected the Trial Examiner's theory in the following words: "we disagree with the Trial Examiner's findings that the refusal took place on and after October 12, 1948" (App. 10) and "As our decision indicates, we do not subscribe to the Trial Examiner's theory of the issue under discussion." (App. 12).

Petitioner submits that the Board's rejection and disavowal of the Trial Examiner's theory of the refusal to bargain precludes it from reinstating and advancing that argument to support its decision before this Court. It has long been settled that "the grounds upon which an administrative order must be judged are those upon which the record discloses that its action was based." *Securities & Exchange Commission v. Chenery Corporation*, 318 U. S. 80, 87 (1943).¹ Here as in the *Chenery* case, the administrative agency is urging a ground to support its decision which the agency should have adopted or could have adopted as an alternative to what it did in fact adopt. As in the *Chenery* case the scope of review here must be confined to the validity of the grounds upon which the Board actually based its action.

¹ Accord: *United States v. Carolina Freight Carriers Corp.*, 315 U. S. 475 (1942); *Phelps Dodge Corp. v. N. L. R. B.*, 313 U. S. 177, 197 (1941).

Assuming *arguendo* that the Board may now advance the Trial Examiner's theory, it is clear that there is no basis either in fact or in law to support it. The Trial Examiner relied upon *Prigg Boat Works*, 69 N. L. R. B. 97 (1946); *John Deere Plow Co. of St. Louis*, 82 N. L. R. B. No. 4 (1949); and *D. H. Holmes Company Ltd.*, 81 N. L. R. B. 753 (1949) to support the novel proposition that Petitioner was guilty of an unlawful refusal to bargain despite an affirmative finding that its refusals on the only occasions it was requested by the union to bargain were in good faith. However, examination of these cases reveals that they are inapposite. Further, the theory completely ignores and conflicts with the Board's own decisions in *Artcraft Hosiery Company*, 78 N. L. R. B. 333 (1948); *Chamberlain Corporation*, 75 N. L. R. B. 1188 (1948); and *Roanoke Public Warehouse*, 72 N. L. R. B. 1281 (1947).

At the outset it should be noted that there is not a shred of evidence in the record to support the Board's conclusion that Petitioner after October 12 no longer had reason to believe the union's claim of majority was untrue. The record shows that up until the very day preceding the election there was not a single instance of interrogation of employees (App. 51-54, 157-158). And even such instances of interrogation which occurred thereafter were not intended to, and did not in fact, reveal the extent of the union strength. It is also obvious that the Board's presumption that the mere occurrence on October 12 of a minor violation² of Section 8(a)(1) of the Act is evidence of the fact that Petitioner's *bona fide* doubt of the majority had disappeared is wholly unwarranted. Similarly, the Board's presumption that relatively minor violations of Section 8(a)(1) of the Act which occurred in the heat of pre-election campaigning on the

² Gilbert's reference in the statement read to the employees with respect to Petitioner's plan to permit employees to eat in the canteen after the equipment arrived (App. 87-93).

day preceding and the day of the election is evidence that Petitioner's good faith doubt of the union majority had disappeared is without logical basis.

An examination of the *Artcraft Hosiery*, the *Chamberlain Corporation*, and the *Roanoke Public Warehouse* cases demonstrates that the finding that Petitioner's refusals to recognize the union on September 24 and September 30 were in good faith precludes a finding of unlawful refusal to bargain under the facts in this case. Indeed, in none of those cases are the facts establishing the good faith of the employer as strong as in the instant case.

In this case there is an affirmative finding by the Trial Examiner that Petitioner's refusal to bargain in response to the requests of the Union on September 24 and September 30 was in good faith (App. 31-33). Such a finding is not present in either the *Artcraft Hosiery* or *Roanoke Public Warehouse* cases. Further, in the *Roanoke Public Warehouse* and the *Chamberlain Corporation* cases, conduct in violation of Section 8(a)(1) of the Act occurred before or coincident with the employer's alleged refusal to bargain. In the instant case no such unlawful conduct is present either before or coincident with Petitioner's alleged refusal to bargain. The first such instance occurred one week before the election and was of a minor nature, if in fact it was a violation of Section 8(a)(1) at all.

Although the employer's conduct in violation of Section 8(a)(1) in the *Artcraft Hosiery* case occurred several months after the initial request for recognition, this fact is explained by that company's failure to cooperate in a speedy resolution of the question of the union's majority status. It is significant, however, that in the *Artcraft Hosiery* case, a sustained program of conduct in violation of Section 8(a)(1) of the Act commenced on the date of the hearing of the union's petition, at least six weeks prior to the election. In the instant case, assuming Gilbert's

statement on October 12th violated Section 8(a)(1) of the Act, it occurred one week before the election. All other conduct in violation of Section 8(a)(1) occurred on the day preceding and on the day of the election. To attempt to distinguish this case adversely from the *Artcraft Hosiery* case upon the basis of the lapse of time between the initial request for recognition and the occurrence of the violation of Section 8(a)(1) of the Act would put a premium upon dilatory tactics by an employer. Such a distinction would encourage an employer deliberately to delay resolution of a representation question by an election, lest the commission of conduct in violation of Section 8(a)(1) be viewed automatically as evidence of lack of a good faith doubt of the union's majority and, therefore, an unlawful refusal to bargain in violation of Section 8(a)(5) of the Act.

It is readily evident that the degree of cooperation extended by Petitioner to the union in resolving the question of majority representation far exceeds the cooperation offered by the employer in the *Artcraft Hosiery* case or the *Chamberlain Corporation* case. In both of those cases, the company refused to agree to a consent election, and long periods elapsed before the majority status of the union was put to an election test. In the present case, Petitioner agreed to a consent election at the first conference with the union and election took place less than three weeks thereafter.

It is unnecessary to detail the specific instances of conduct in violation of Section 8(a)(1) of the Act which were present in the *Artcraft Hosiery*, *Chamberlain Corporation*, and *Roanoke Public Warehouse* cases. It is sufficient to point out that such conduct exceeded substantially, both in frequency and degree of coercion, that which occurred in the case at hand.

It is manifest that the Trial Examiner's theory would destroy the established doctrine which governs the *Artcraft Hosiery*, *Chamberlain Corporation*, *Roanoke Pub-*

lic Warehouse, and similar³ cases. This theory would achieve the absurd result that an employer would be guilty of an unlawful refusal to bargain, despite complete good faith on his part in refusing recognition prior to resolution of the representation question by an election, if any conduct in violation of Section 8(a)(1), regardless of its minor nature, occurs prior to the election.

Analysis of the *John Deere Plow Company*, *D. H. Holmes Co.* and *Prigg Boat Works* cases discloses that each is clearly distinguishable on its facts from the case at hand. In each of these cases, in contradistinction to the instant case, there is a finding, supported by substantial evidence that the company *at the time of the insistence upon an election* did not have a good faith doubt as to the union's majority. In each of these cases, such evidence appears in the form of serious violations of Sections 8(a)(1) or 8(a)(3) of the Act prior to or coincident with the company's insistence upon an election. In none of these cases did the Board find, as in the present case, that a good faith doubt existed at the time of the refusal to bargain. This distinction is apparent in all of these cases but is particularly pointed in the *John Deere Plow* case.⁴

The foregoing discussion clearly demonstrates that the Board is precluded from advancing the Trial Examiner's theory to support its decision at this stage of the proceed-

³ See also *A. Sartorius & Co.*, 40 N. L. R. B. 107 (1942), *Solvay Process Co.*, 47 N. L. R. B. 1113 (1943); *Russell Kingston*, 74 N. L. R. B. 1484 (1947).

⁴ In the *John Deere Plow* case, the Board found an unlawful refusal to bargain on July 19, after the union had lost an election and then secured new authorization cards. However, the Board did not find such unlawful refusal to bargain at an earlier date when the company insisted upon an election. This is particularly significant since the company engaged in a number of minor violations of Section 8(a)(1) even before agreeing to the consent election.

ings. And even if it is properly before this Court, the theory is unsupported by the facts in the record and is precluded by established principles of law.

Respectfully submitted,

HENRY J. FOX

JAMES F. KENNEY

1002 Ring Building

Washington, D. C.

Attorneys for Petitioner

Of Counsel:

Posner, Berge, Fox & Arent

1002 Ring Building,

Washington 6, D. C.

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